

The Chair: All witnesses are excused until 9 o'clock next Monday morning.

Mr. Johnson: The Committee has not as yet voted to extend the time until then—

Whereupon, on motion of Mr. Johnson of Dimmit that the Committee rise and report progress and ask leave of the House to recess until 9 o'clock next Monday morning, the question was taken and the motion prevailed by a vote of 76 yeas, 34 nays and 5 present and not voting.

SECOND DAY.

(Friday, February 21, 1930.)

The House met at 10 o'clock a. m., pursuant to adjournment, and was called to order by Speaker Barron.

The roll was called and developed the fact that there was not a quorum present.

Mr. DeWolfe moved a call of the House for the purpose of securing a quorum, and the call was duly ordered.

The Speaker then directed the Doorkeeper to close the main entrance to the Hall and instructed the Sergeant-at-Arms to lock all other doors leading from the Hall, and stated that no member would be permitted to leave the Hall without written permission from the Speaker.

On motion of Mr. DeWolfe, the Sergeant-at-Arms was instructed to bring in all absent members within the State who are not ill or have serious sickness in their family.

LEAVES OF ABSENCE GRANTED.

On motion of Mr. Young, by unanimous consent, Mr. Turner was granted leave of absence for today.

On motion of Mr. Purl, by unanimous consent, Mr. Speck was granted leave of absence for today.

REPORT OF SPEAKER BARRON IN REGARD TO ABSENT MEMBERS.

The Speaker laid before the House and had read the following report:

The following are the absentees from the House of Representatives who were sent messages by wire and telephone, where it was possible to reach them:

Frank Baldwin.
Walter H. Beck.
Thos. R. Bond.
J. T. Cox.
E. D. Dunlap.
James Finlay.

R. A. Fuchs.
Bailey W. Hardy.
A. E. Harding.
Mike Hogg.
A. P. Johnson of Dimmit.
Harold Kayton.
W. F. Keeton.
Geo. C. Kemble.
L. M. Kenyon.
A. H. King.
J. W. Kinnear.
C. Land.
G. Y. Lee.
Jno. A. Long.
F. H. Marks.
Frank W. Martin.
W. R. Montgomery.
Ed. L. Mullally.
M. E. O'Neill.
Frank Patterson.
James Pavlica.
W. E. Pope of Nueces.
B. E. Quinn.
R. L. Reader.
W. E. Reid.
C. H. Shaver.
Leonard Tillotson.
Henry A. Turner.
Clyde W. Warwick.
Lawrence Westbrook.
W. H. Wiggs.

The following is the form of wire sent the above named absentees:

"I am instructed by the House of Representatives to telephone or wire you to be present at 10 o'clock a. m., February 21, 1930, to continue investigation of impeachment charges against State Comptroller, and unless I am advised by you by a reasonable time tonight that you will be present at 10 o'clock tomorrow the Sergeant-at-Arms and Speaker of the House are instructed to wire warrant to the sheriff of your county commanding him to forthwith deliver you to the bar of the House of Representatives at Austin, Texas. Advise me promptly whether or not you will be present or on your way to Austin at 10 o'clock tomorrow.

W. S. BARRON.

The Speaker reached the following members by telephone:

Beck.
Cox of Limestone.
Dunlap.
Finlay.
Hogg.
Johnson of Dimmit.
Kayton.
Keeton.
Hardy.
Kenyon.

King.
Kinnear.
Land.
Lee.
Martin.
Montgomery.
Quinn.
Reid.
Shaver.
Turner.
Warwick.
Westbrook.
Wiggs.

Of the absentees, the following named members report that they will be on their way early Friday morning, either on trains or busses, from their homes, February 21, 1930:

Beck.
Cox of Limestone.
Dunlap.
Fuchs.
Hardy.
Hogg.
Johnson of Dimmit.
Keeton.
Kinnear.
Land.
Lee.
Long of Houston.
Martin.
Mullally.
Pope of Nueces.
Reid.
Shaver.
Wiggs.

Mr. Westbrook reports that he had arranged a farm relief committee meeting to be held in Waco this morning. As soon as the committee adjourns, around noon, he will come immediately to Austin.

Mr. Turner reports that it is impossible for him to come to Austin, for the reason that a suit in which the First National Bank, of Madisonville, of which he is president, is a party, was set specially for today, and a special term of the district court called today, witnesses, attorneys and all other interested parties being ready for trial. The case was set at a special term of the district court called at his request to enable him to complete his duties at the Fourth Called Session. He stated that if his presence was demanded at Austin he would be compelled to wire his resignation to the Governor. The Speaker advised him that, under the conditions, he would be excused.

The following absentees report that they will be unable to attend on ac-

count of sickness of themselves, or in their families:

Finlay.
Kenyon.
Quinn.
Warwick.

Mr. Bond requests that I try to have him excused today and Saturday, but that, if it were impossible for him to get around coming to Austin, he would come immediately. The Speaker wired him that it would be impossible for him to get around coming to Austin, and to advise Speaker immediately, else a warrant would be issued to the sheriff of his county for his arrest.

The following members report that, on account of urgent business matters, they can't be here today:

King.
Kayton.
Montgomery.

Warrants for their arrest have been issued to any State Ranger, the sheriff or any constable of their respective counties before 12 o'clock last night.

LEAVES OF ABSENCE GRANTED.

Mr. Harding, by unanimous consent, was granted leave of absence for Monday and Tuesday of this week, on motion of Speaker Barron.

Mr. Bradley, by unanimous consent, was granted leave of absence for today.

Mr. Anderson moved that the House adjourn until 10 o'clock a. m. tomorrow.

Yeas and nays were demanded, and the motion was lost by the following vote:

Yeas—34.

| | |
|-------------------|--------------------|
| Anderson. | Johnson of Scurry. |
| Bateman. | Kincaid. |
| Carpenter. | Long of Wichita. |
| Cox of Lamar. | Loy. |
| Enderby. | Mankin. |
| Eickenroht. | Maynard. |
| Farrar. | Mehl. |
| Fuchs. | Prendergast. |
| Gates. | Richardson. |
| Graves | Shelton. |
| of Williamson. | Simmons. |
| Graves of Erath. | Sinks. |
| Harding. | Waddell. |
| Harper. | Walters. |
| Hefley. | Webb. |
| Jenkins. | Williams |
| Johnson | of Sabine. |
| of Dallam. | Young. |
| Johnson of Smith. | |

Nays—50.

Mr. Speaker. Acker.

| | |
|-------------------|----------------|
| Ackerman. | McCombs. |
| Adkins. | McGill. |
| Allred. | Minor. |
| Barnett. | Olsen. |
| Bounds. | Palmer. |
| Chastain. | Petsch. |
| Coltrin. | Pool. |
| Conway. | Pope of Jones. |
| Cox of Limestone. | Purl. |
| Duvall. | Ray. |
| Forbes. | Renfro. |
| Giles. | Rogers. |
| Harrison. | Sanders. |
| Heaton. | Savage. |
| Hines. | Shaver. |
| Holder. | Snelgrove. |
| Hopkins. | Tarwater. |
| Jones. | Terrell. |
| Justiss. | Van Zandt. |
| Keller. | Wallace. |
| Kennedy. | West. |
| Lee. | Williams |
| Lemens. | of Travis. |
| Magee. | Woodruff. |
| Martin. | |

Absent.

| | |
|------------------|-----------------|
| Albritton. | McKean. |
| Avis. | Metcalfe. |
| Baker. | Montgomery. |
| Baldwin. | Moore. |
| Beck. | Morse. |
| Bond. | Mosely. |
| Bradley. | Mullally. |
| Brice. | Murphy. |
| Brooks. | Negley. |
| Davis. | Nicholson. |
| DeWolfe. | O'Neill. |
| Dunlap. | Patterson. |
| Ewing. | Pavlica. |
| Finn. | Pope of Nueces. |
| Finlay. | Quinn. |
| Gilbert. | Reader. |
| Hardy. | Reid. |
| Harman. | Riley. |
| Hogg. | Rountree. |
| Hornaday. | Sherrill. |
| Hubbard. | Speck. |
| Johnson | Stephens. |
| of Dimmit. | Stevenson. |
| Kayton. | Storey. |
| Keeton. | Strong. |
| Kemble. | Thompson. |
| Kenyon. | Tillotson. |
| King. | Turner. |
| Kinnear. | Veatch. |
| Land. | Warwick. |
| Long of Houston. | Westbrook. |
| Marks. | Wiggs. |
| Mauritz. | Williams |
| McDonald. | of Hardin. |

TO PROVIDE FOR RADIO IN THE HOUSE.

Mr. Allred offered the following resolution:

Whereas, There are many members of the House who will remain over the week-end in Austin that desire further information on the penitentiary system; and

Whereas, The Governor of the State of Texas is making a series of addresses over the radio from various stations in the State on this subject; and

Whereas, This body will likely be adjourned, recessed, or standing at ease during these radio discussions by Governor Moody; therefore, be it

Resolved, That the Sergeant-at-Arms be allowed to set up a radio set of the type where an outdoor aerial is not necessary and install same for the benefit of the members in view of receiving these messages.

Signed—Allred, Snelgrove.

The resolution was read second time.

Mr. Anderson raised a point of order on further consideration of the resolution at this time, on the ground that no business may be transacted in the House when there is not a quorum present.

The Speaker sustained the point of order.

RELATIVE TO ABSENT MEMBERS.

Mr. Shaver asked unanimous consent of the House that the Speaker be instructed to proceed, as under the provisions of the motion by Mr. Keller on yesterday, to bring in the absent members who are absent today and were present on yesterday.

There was no objection offered.

ADJOURNMENT.

On motion of Mr. Justiss, the House, at 5:30 o'clock p. m., adjourned until 9:20 o'clock a. m. tomorrow.

APPENDIX.

PROCEEDINGS IN INVESTIGATION OF CHARGES FILED AGAINST S. H. TERRELL, COMPTROLLER.

MONDAY, FEBRUARY 17, 1930.

Afternoon Session.

On motion of Mr. Johnson, the House resolved itself into a Committee of the Whole for the purpose of hearing the charges preferred against Comptroller S. H. Terrell, as covered by recess from Thursday afternoon of last week.

Whereupon, the Committee asked leave of the House to rise and report progress and asked to sit again on Tuesday at 2 o'clock. The question was put and the motion prevailed.

TUESDAY, FEBRUARY 18, 1930.

Afternoon Session.

Pursuant to adjournment of the Committee of the Whole from yesterday afternoon, the House, by motion of Mr. McCombs, resolved itself into a Committee of the Whole, whereupon the following proceedings were had:

The Chair: For the information of the members of the committee, I will state that the gentlemen representing the respondent, and the gentlemen representing the House, have agreed that the proceedings would begin again tomorrow at 2 o'clock. There are certain preliminaries that are necessary to get out of the way, and it is thought that tomorrow at 2 o'clock will be satisfactory to all concerned. If there is no objection to this, There are certain matters, so the chairman is informed; that are in the nature of preliminary matters that would be gotten out of the way and if it is agreeable to the committee it is suggested that the committee take a recess until 2 o'clock tomorrow afternoon when this matter will proceed with as little interruption as possible. There have been a number of witnesses called to be here and it would give the members representing the House time to get their data lined up as they desire to offer it, and would in fact save the time of the House and the members by doing this.

Mr. Keller: I move that the committee rise, report progress and ask leave of the House to sit again tomorrow at 2 o'clock.

Thereupon, the question was put and the motion prevailed.

WEDNESDAY, FEBRUARY 19, 1930.

Afternoon Session.

The Committee of the Whole met at 3:45 o'clock p. m., this day, pursuant to adjournment.

Mr. Pope of Jones: Mr. Speaker, I move that the House now resolve itself into the Committee of the Whole.

The Speaker: The gentleman from Jones moves that the House resolve itself into the Committee of the Whole.

Is the motion seconded? The motion is seconded.

The question was thereupon taken and the motion prevailed.

The Chairman: The Committee will be in order, please. Mr. Sergeant-at-Arms, get some chairs around here for the attorneys and get everything in order for the convenience and comfort of all the parties conducting the investigation.

Mr. Sanders of Nacogdoches: Mr. Chairman and Ladies and Gentlemen of the House, in the interest of time and in order to keep the record straight, I would like to be permitted to make a suggestion with reference to this proceeding, and that is this: That the stenographers be instructed not to take down what may be said by the members themselves, or any question that the members themselves may ask, unless they are recognized by the chairman and the chairman announces their names, because I am sure that these gentlemen in taking down this testimony, with members arising in various parts of the House, unless some one calls the names and unless they are put on notice about it, that will interfere with their work. I believe that this suggestion, if carried out, will be in the interest of time.

Mr. Johnson of Dimmit: Will the gentleman yield?

Mr. Sanders of Nacogdoches: Yes, sir.

Mr. Johnson of Dimmit: Mr. Sanders, as I understand it, as carried on here before, any member who desires or requests a question asked writes it and hands it to the attorneys and they present it to the House.

Mr. Sanders of Nacogdoches: That is all right. I merely did it to save time.

The Chairman: That is a good suggestion. I think we will work that out with the stenographers. Of course, if half a dozen members are trying to get hectic at the same time, of course we want to bear around that all we can. There is no question but what all of the testimony and the entire proceedings will be printed daily in the House Journal and the stenographers are equipped for twenty-four-hour service.

Mr. McGill: Mr. Chairman, I desire to ask opposing counsel whether or not they desire to read their answer, or have it read, before we proceed.

The Chairman: You can reply to the question of Mr. McGill.

Mr. Keeling: Mr. Chairman, before we proceed, I would like to ask that you

ascertain if there is a quorum present, and in order that we might not appear to be captious or technical, to state that we are unwilling to proceed with the hearing at any time we do not have a quorum of the committee present. Therefore, I will ask that the chair at this juncture ascertain if we have a quorum present, so that we may proceed.

The Chairman: Judge Keeling, I will state on that that the rules of the House govern the procedure here and are the rules of the committee. So far as the chair is concerned, he does not care about the technicalities of it. We have had no roll call to ascertain whether or not a quorum is present. If there is no objection on the part of the committee, we will determine by a roll call whether or not a quorum is present at this time. But I mention what the rule is because we may sooner or later be thrown back on the rule. I will ask for unanimous consent that we have a roll call at this time to determine whether or not a quorum is present.

Mr. Purl of Dallas: Mr. Chairman.

The Chairman: The gentleman from Dallas.

Mr. Purl of Dallas: Does the gentleman mean that any time a quorum is not present we will have to stop the proceedings to take a roll call?

The Chairman: I presume that would be the effect of it.

Mr. Keeling: I just simply mean this, that when a quorum is present we are ready to proceed, and we want a quorum present at the time all proceedings are had in connection with this; and, of course, I don't want to be committed as to just how often we might ask for a roll call. Of course, we don't want to do anything foolish. We just want to proceed, but we want a quorum here.

Mr. Purl of Dallas: Is a quorum 100 or a majority?

The Chairman: A quorum is 100.

Mr. Stephens of Hopkins: Mr. Chairman, I rise to state that this Committee of the Whole is operating under the House rules.

The Chairman: Yes, sir.

Mr. Stephens of Hopkins: Will that be recognized?

The Chairman: Yes, sir.

Mr. Stephens of Hopkins: Mr. Chairman, I move that the chairman of this Committee of the Whole be instructed to wire the absentee members to immediately return to their duty.

Mr. Albritton of DeWitt: Mr. Chairman, I would like to make an amendment to that motion.

The Chairman: What is the amendment?

Mr. Albritton of DeWitt: That you wire the sheriff or some officer to bring those absentee members in, if they won't come otherwise.

The Chairman: Let me carry out the instructions to wire all members who are absent and who are not in the city and who are not ill that their presence is demanded.

Mr. Albritton of DeWitt: That is all right.

Mr. Quinn of Jefferson: Mr. Chairman, I would like to hear from our attorneys and see whether this proceeding is in line with all their investigations.

The Chairman: Any objection to this motion?

Mr. Quinn of Jefferson: Mr. Chairman, I would like to have a little information, to see if these attorneys are ready.

The Chairman: That has nothing to do with the motion. The gentleman's motion is in order. Then, with reference to the procedure, we will go back on that. Is there objection to the adoption of the motion? The chair hears none, and it is so ordered.

Mr. McCombs of Dallas: Mr. Chairman.

The Chairman: The gentleman from Dallas.

Mr. McCombs: I don't understand what Judge Keeling told you about asking for a quorum. Does he mean that whenever he wants to he will stand up and ask for a quorum?

The Chairman: Yes, that is what you mean, isn't it, Judge Keeling? Yes, that is the way the chair construes it.

Mr. Keeling: Any time there is no quorum here we are not a legal committee. We can ascertain that in any intelligent way, vote on the board or any other way you want to.

The Chairman: Let the chair explain, Judge Keeling, that we can use various methods of determining whether there is a quorum. One is to move to adjourn and demand a roll call. That forces a machine vote, and then to make a point of order that no quorum is present, and no further business can be transacted in the absence of a quorum or until a quorum is obtained.

Judge Sinks: I want to ask if we didn't pass a rule to make 76 a quorum?

The Chairman: No, sir; that was voted down.

Mr. Keeling: We don't want to be technical at all. We just want to get a quorum here.

The Chairman: Now we will get a quorum here.

Mr. McCombs of Dallas: Mr. Chairman, parliamentary inquiry.

The Chairman: State your inquiry.

Mr. McCombs of Dallas: My understanding is this, that we will not ascertain whether a quorum is present or not except under the ordinary rules of practice prescribed in the rule book.

The Chairman: Yes, sir.

Mr. McCombs of Dallas: And a demand by an attorney who is not a member of the committee will not be entertained?

The Chairman: No, sir. I will state that we amended the rules of the House yesterday, empowering the Committee of the Whole House to put on a call of the committee for the purpose of obtaining a quorum. Heretofore the Committee of the Whole has not had that power.

Mr. Van Zandt of Grayson: In addition to putting on a call to develop a quorum, we can put on a call for a specific time.

The Chairman: Yes, sir, that is correct, under the changed rule.

Mr. Van Zandt of Grayson: And only members of the Committee of the Whole can make that motion.

The Chairman: That is correct.

Mr. Purl of Dallas: Mr. Chairman.

The Chairman: The gentleman from Dallas.

Mr. Purl of Dallas: I move a call of the committee until 5 o'clock for the purpose of obtaining a quorum.

The question was thereupon taken, and the motion prevailed.

The Chairman: Mr. Doorkeeper, permit no one to pass unless they have a special permit from the chairman. All persons present, please register. We have exactly 100 members registered.

I will ask the court reporter to rise and take the usual oath.

Thereupon, H. D. Mahaffey, Hall Etter and Henry L. Gazley were sworn as official reporters for this hearing, the chairman administering the oath of office.

Mr. McGill: Now, Mr. Chairman, I would like to renew my question to opposing counsel, whether or not it is their desire to have their answer read?

The Chairman: Mr. McGill asks whether you desire to have your answer read.

Mr. Keeling: We would like to have the secretary read the answer, please.

The Chairman: The clerk will please read the answer.

Mr. Johnson of Dimmit: Will some-

one point out on what page of the Journal we will find the charges?

Mr. McGill: On page 207 of the House Journal of Monday, February 10. Mr. Chairman, while waiting to get that answer, I would like to make a preliminary statement in regard to this matter.

The Chairman: The gentleman from El Paso.

Mr. McGill: Mr. Chairman and Gentlemen of the Committee, for the benefit of opposing counsel, and in order that the House may have a better understanding of our procedure, I am going at this time to make a brief outline of the manner in which we intend to present the facts relevant to this impeachment proceeding. We have agreed that Mr. Lynn, the State Auditor, shall be first examined by Mr. Petsch as to all matters relevant to this report; that after that we will then start in on charge No. 8, which has to do with the Texas Tax Record Company, and examine all the witnesses on that particular subject. That examination will be by myself. We will then take up charge No. 9, which has to do with the escrow moneys, and the examination of all the witnesses on that particular subject will be by Mr. Petsch. Also Mr. Petsch will examine the witnesses in connection with the conversion of public funds, which is also included in that charge No. 9. And then we have divided the other charges into the following heads, namely: "Fraudulent misapplication of funds, and fraudulent misapplication of inheritance tax, which cover charges from 10 to 17, inclusive, and will examine all the witnesses on those particular subjects. That examination will be conducted by myself. Mr. Petsch will conclude the examination of the witnesses on the final subject, that of incompetency, included in charge 18. Mr. Stevenson will aid us in raising objections, and meeting objections that may be made by opposing counsel, and will conduct the cross examination of all the witnesses.

The Chairman: Do you gentlemen invoke the rule in these proceedings?

Mr. Keeling: The rule is not invoked.

The Chairman: The rule is not invoked. All right. Are you ready to proceed, gentlemen? Mr. Clerk, read the answer, please.

The Reading Clerk thereupon read the answer of the respondent, which is as follows, to wit:

Answer of S. H. Terrell, Comptroller, to
Charges Initiating Impeachment
Proceedings by the House of
Representatives Against
Him and Where Such
Proceedings Are
Now Pending.

To the Speaker and Members of the
Forty-first Legislature of Texas, now
sitting in their Fourth Called Session:

S. H. Terrell, Comptroller, respondent
in the above styled proceedings, answer-
ing such charges separately and collec-
tively, respectfully submits:

1.

He denies generally each and every
allegation in charge No. 1 contained.

He denies specifically and especially
that part of charge No. 1, to the effect
that he destroyed the records and ac-
counts therein named, or any paper
therein named, and specifically states
that he has never destroyed any record,
book, account, check, voucher or other
paper of any character, relating to, be-
longing to, or in any way pertaining
to the records, files, books or papers
of the Comptroller's Office of the State
of Texas.

2.

In answering charge No. 2, and that
part thereof which says: "That he has
continuously, during said time, with the
exception of one month, passed the ac-
counts of the Comptroller to the State
Treasury for payment, without having
said accounts first approved by the Sec-
retary of State, as provided by law." Respondent says that it has been a cus-
tom and a precedent, long established,
pursued and maintained in and by the
Comptroller's Office of the State of
Texas, followed by all of his predeces-
sors, that the accounts of said office
were not submitted to the Secretary of
State for approval before being pre-
sented to the Treasurer for payment.
That, when he became Comptroller, the
employe of his predecessor, who handled
the accounts of the Department, re-
mained with him in the same capacity
which he had theretofore occupied and
continued to handle the accounts of the
Department as he had theretofore
handled them, and for a period of more
than eight months conducted the divi-
sion of the Department as it had al-
ways been conducted and handled its
accounts without submitting them to
the Secretary of State for approval be-
fore presentation to the Treasurer.
That if respondent pursued the same

course and it was error, respondent
states that it was an error that had
long been common to the Department
and had become a precedent in the De-
partment; and that, if he followed it,
he did so ignorantly and without any
purpose to fraudulently obtain any
benefit therefrom, or to benefit thereby;
and he specifically denies that he ob-
tained any profit thereby or gained any
benefit therefrom, and that if it was
wrong to pursue this course it springs
from the fact that the statute in such
case made and provided had long been
dormant and had become one of disuse
by the Department for more than a
quarter of a century.

3.

Answering charge No. 3, to the effect
that respondent had violated Article
4348, R. C. S., 1925, respondent states
that all books and accounts dealing
with such funds, as in said charge re-
ferred to, which had been kept by his
predecessors with reference to such
funds and accounts were fully kept by
respondent together with certain addi-
tions thereto and enlargements thereof;
and that in all respects he substan-
tially complied with said article of the
statutes in all particulars. He further
says that he complied with the statute
in his statement to the Governor and
included therein a complete record of
the public revenues and expenditures
during the preceding year and of the
estimates of same for the ensuing year,
and in all particulars substantially com-
plied with the full provisions of said
article.

4.

This respondent, answering charge
No. 4, that he had failed to keep an
alphabetical list of claims such as con-
templated by Article 4357 of the Re-
vised Civil Statutes, that he not only
complied substantially with said ar-
ticle in all particulars but that there
are now a number of ways, means and
methods by which a claim can be lo-
cated and an account found in said
Department in addition to the alpha-
betical list under the heads of the
various departments, such as numeri-
cally list claims and in many other
ways.

5.

Answering charge No. 5, to the effect
that respondent failed to keep a record
of all State-owned bonds and has failed
to reconcile his said accounts with sim-
ilar accounts required by the State

Treasurer; and further that he had made no quarterly balances, defendant denies generally each and every allegation in this charge contained.

6.

Answering charge No. 6 that "he has not kept control accounts for tax collectors covering current and delinquent taxes" and "violated Section 4 of said article, that he had not kept accounts for all moneys and securities held by the State Treasurer, and neither has he kept a record of accounts with heads of departments for all money received by them and not deposited with the Treasurer, respondent denies each and every allegation in this charge contained and alleges that he has substantially complied with each and every provision of said Article 4364, Revised Civil Statutes, 1925.

7.

Answering charge No. 7 that respondent had "violated Article 4366, Revised Civil Statutes, 1925, in the following respects: (1) In that he has failed to examine the Treasurer's disbursements; (2) in that he has failed to cancel warrants to prevent future circulation; (3) in that he has failed to supervise receipts and deposits of the Treasurer; (4) and, in that he has not checked the balance of money on hand in the State Treasury; respondent denies each and every allegation in this charge contained, and especially denies each allegation in each subdivision thereof and says that he has complied fully with the terms and provisions of said Article 4366 of the Revised Civil Statutes of 1925.

8.

Answering charge No. 8, which seeks to connect respondent with the organization of the so-called Texas Tax Record Company, with the operation of the same with aiding and assisting the same and with profiting thereby, this respondent denies each and every allegation in said charge contained and specifically denies that he had any connection with said organization, either in its creation, management or operation, or that he was a beneficiary thereof or therefrom.

9.

Answering charge No. 9, relating to certain escrow funds of the Magnolia Petroleum Company in the amount of \$6,312.74, respondent denies each and

every allegation in said charge contained and specifically denies that he admitted: (1) That the money had not been returned to the company; and (2) that the same had not been deposited in the State Treasury, and denies that he made any admission with reference thereto whatever. He specifically denies that he refused to divulge what had been done with said money; that he specifically denies that the facts well show that certain funds have been appropriated to the use and benefit of this respondent; and he specifically denies that he did use said funds, or any part thereof, for his personal use and benefit.

10.

Answering charge No. 10, which undertakes to charge that this respondent did fraudulently misapply and fraudulently convert to his own use and benefit the thereafter named respective amount out of State funds deposited in the Austin National Bank, to wit, setting out such items, this respondent denies each and every allegation in said charge contained, and denies that he misapplied and fraudulently converted to his own use and benefit any item or sum of money deposited in the Austin National Bank, and which was State funds.

11.

Respondent, answering charge No. 11, which undertakes to charge that he did fraudulently misapply and fraudulently convert to his own use and benefit the thereafter named respective amounts out of State funds deposited in the Texas Bank & Trust Company, respondent denies each and every allegation in said charge contained and specifically denies that he misapplied or fraudulently converted to his own use and benefit any item, or items, of any State funds deposited in said Bank & Trust Company.

12.

Answering charge No. 12, which in effect, charges that respondent did fraudulently take, misapply and convert to his own use the sum of \$2,689.14, the same being State funds by him collected upon accounts due the State of Texas and by him deposited in the Texas Bank & Trust Company, respondent denies each and every allegation in this charge contained.

13.

Answering charge No. 13, which is to the effect that respondent did re-

ceive the sum of \$2,689.14, deposited by him in the Texas Bank & Trust Company, under the account of S. H. Terrell, Comptroller. Special, and did in violation of law fail and refuse to account for same, respondent denies each and every allegation in this charge contained.

14.

Answering charge No. 14, to the effect that respondent did fraudulently misapply certain State funds, by him collected, upon accounts due the State of Texas, and by him deposited in the Austin National Bank, and that respondent collected the sum of \$54,364.55 of said funds; and that respondent deposited such funds in the Austin National Bank and that the same had been withdrawn from said bank and that respondent had destroyed the records of said account and that he had used at least a portion of said fund for his personal use and that the balance of said funds are not accounted for, etc., this respondent denies each and every allegation in this charge contained.

15.

Answering charge No. 15, to the effect that as Comptroller this respondent received the sum of \$54,364.55 deposited by him in the Austin National Bank and did in violation of law fail and refuse to account for same, respondent denies each and every allegation in said charges contained.

16.

Answering charge No. 16, which is to the effect that "the sum of \$4,195.86 as an inheritance tax due the State of Texas for the account of the beneficiaries of the Estate of Wm. O. Allison, did fraudulently misapply the same to his own use and did secrete the same with the fraudulent intent to misapply the same, respondent denies that he fraudulently misapplied said sum of money, or any part thereof, to his own use and denies that he secreted the same with the fraudulent intent to misapply the same. Respondent states that the first he ever heard of this item was when the Auditor, Moore Lynn, called his attention to the fact that it had been collected and had not been accounted for to the State. That he immediately investigated said item, reached the conclusion that it was due the State and at once deposited the same in the State Treasury, to the State's credit, where it now is.

17.

Answering charge No. 17 to the effect that the sum of \$1,362.67 as an inheritance tax due the State of Texas for the account of the beneficiaries of the estate of M. E. Griffith, respondent did fraudulently misapply the same to his own use and did secrete the same with attempt to fraudulently misapply the same. Respondent denies each and every allegation in this charge contained and in this connection states that the first he heard of this item was when Mr. Lynn, the State Auditor, called his attention to it, during the latter part of January and that he investigated said item, reached the conclusion that the department had received it and that the State was entitled to it and that he immediately deposited the same to the credit of the State, in its Treasury, where it now is; and that with reference to this and the preceding item, this respondent had had no connection, no information of and had never heard of them until his attention was called thereby to the Auditor.

18.

Answering charge No. 18, challenging the competency, efficiency and fitness of respondent to the office of Comptroller and with violation of certain provisions and articles of the Revised Civil Statutes of 1925, etc., respondent denies each and every allegation in this article contained.

Respectfully submitted,
W. A. KEELING,
T. H. MCGREGOR.
Attorneys for Respondent.

A Member: Point of inquiry, Mr. Chairman.

The Chairman: State your inquiry.

The Member: Will the answer of the respondent be printed in the Journal?

The Chairman: Yes, sir.

Moore Lynn was thereupon called as a witness in behalf of the House of Representatives, and having been duly sworn by the chairman, testified as follows:

The Chairman: Now, Ladies and Gentlemen of the House, it is the chairman's desire that all of you be as comfortably located as possible, and that we have nothing to interfere with the hearing. Now, if any person wishes to come nearer to the front you can do so, just so you don't take the seat of some other member. Now, I want to ask all employees

and visitors to please stay away from the center here and give the members all the opportunity in the world to hear the proceedings if they desire to do so. I think when the microphone is on, if the chair can hear the proceedings you can hear it all over the hall, and if it is clear to the chair and to the judge sitting here by the chair, you will hear it all over the hall. Now, at any time you are interrupted and prevented from hearing what is going on, especially testimony, you are invited to call the attention of the chair to the fact. All right, proceed.

Direct Examination.

Questions by Mr. Petsch:

Q. Please state your name?

A. Moore Lynn.

Q. How old are you, Mr. Lynn?

A. Forty-five.

Q. You are the State Auditor, are you not, Mr. Lynn?

A. Yes, sir.

Q. Approximately, when did you qualify as State Auditor?

A. September 18, 1929.

Q. Mr. Lynn, state whether or not you have been a licensed and fully recognized auditor and whether you were such a licensed auditor prior to the time that you qualified for the position or office you now hold?

A. I take it you mean when I became a certified—in regard to becoming a certified public accountant?

Q. Yes, sir.

A. I became a certified public accountant in June of 1923.

Q. State whether you remained a certified public accountant and practiced your profession from that time up to the present?

A. Yes, sir, I have continuously.

Q. What business, if any, were you engaged in prior to that time—prior to the time that you became a certified public accountant?

A. For several years prior to that time I worked for a large accounting firm in Dallas. Back in 1918, for ten or twelve years, I was with banks, different banks in Dallas, as teller up on to assistant cashier of banks in Dallas.

Q. Mr. Lynn, since the time that you qualified as State Auditor, state whether or not you have spent your time laying the foundation for the duties of your office and familiarizing yourself with the duties, and then began making suggestions to the different department heads?

A. Yes, sir, as soon as I qualified I began studying the conditions in the

Capitol and have examined different—some of the departments and made some suggestions for improvements in some of the departments.

Q. In connection with the work that you have done, state whether or not you have had dealings with the Comptroller's department?

A. Yes, sir, I have.

Q. S. H. Terrell is the present Comptroller, isn't he?

A. He is.

Q. Mr. Lynn, these charges—some of these charges which are set forth and filed by the House upon which this proceeding is founded deal with the general operations of the department. For instance, the first charge is to the effect that the Comptroller violated Article 4344, pertaining to accounts. Now, will you please explain in what manner and in what way this article and the provisions of the article were violated, according to the investigation you have made?

A. I would like to have that article read, I don't recall just the wording of that article. I have some notes on it.

Q. You say you prefer to get your notes to give that testimony?

A. I see that I have the statute itself. Well, what article do you refer to? Shall I read the statute?

Q. Just explain—well, the basis of the charge; the charge sets out that he violated Sections 5, 6, 9 and 18 of that article. Will you now just state in what manner those violations occurred, if any?

A. Section 5 provides that the Comptroller shall prescribe and furnish the forms to be used by all persons in the collection of public revenue, and the mode and manner of keeping and settling accounts.

Q. Now, then, from your investigation, state whether or not you found that Mr. Terrell had substantially complied with that section?

A. In regard to the accounts of tax assessors and tax collectors, that has been complied with.

Q. Well, in reference to all other accounts, state whether or not you found it had been substantially complied with?

A. I didn't so find it.

Q. What about the provisions of Section 6 of that article?

A. It states he shall prescribe forms of the same class, kind and purpose, so as to be uniform in size, arrangement, matter and form. As far as we have been able to learn, that has never been done by the Comptroller.

Q. What about the provisions of Section 9?

A. Section 9 states that he shall keep and settle all accounts in which the State is interested, including all moneys received by the State as interest and other payments on land and fees of his and other departments of the State government, and all other moneys received by the State from different sources and for whatever purpose.

Q. Now, state whether or not in your investigation you determined if this section has been complied with?

A. There are a great many things received for various purposes of which, as far as I can ascertain, the Comptroller has no record whatever.

Q. Will you please state whether or not the Comptroller has complied with Section 18 of that article, and if not, then state in what manner he has failed to comply with it?

A. Section 18 states that he shall preserve the records—I beg your pardon—preserve the books, records, papers, and other things belonging in his office, and deliver the same in good condition to his successor. He told me before witnesses that certain records had been destroyed.

Q. What kind of records did that have reference to—records which you considered to be records of his office and other records?

A. Records that I so considered, bank statements, canceled checks.

Q. Pertaining to what character of accounts?

A. Special bank accounts in which State funds had been deposited.

Q. Now, Mr. Lynn, I believe that you are familiar with the first seven charges, which charge Mr. Terrell, or accuse Mr. Terrell, of violating certain laws which pertain to the operation of this department, do they not?

A. Yes, sir.

Q. Now, Mr. Lynn, from your investigation, state whether or not you found that sometime during the year 1910, or during the year 1909, there had been an audit made of the Comptroller's Department and the Treasury Department?

A. There was an audit made by an accounting firm from New York, a very extensive audit, had in the Comptroller's Department and the Treasury Department in 1909.

Q. As the result of that audit, state whether or not the records show that certain legislation was passed pertaining to the operation of the bookkeeping systems of the Comptroller's Department and the Treasury Department, so as to make of the operations of these departments a check upon each other?

A. Yes, sir, an audit made a part of recommendations in regard to legislation passed, and there is every indication that the legislation was passed, based mainly on recommendation made by the auditors. In some cases some of the statutes follow almost identically the wording contained in this very audit report.

Q. Now, state whether or not the statutes referred to are the ones that you have in mind when you state that in some instances they practically follow the wording of the auditor's report?

A. You mean the precise statutes?

Q. No, sir; no, sir; the general language of the statutes, which is charged in these particular articles which are alleged to have been violated by Mr. Terrell, are those or not the statutes which to a great extent follow the suggestions made in the auditor's report you have just been questioned about?

A. Yes, sir, those are the—those are the same statutes.

Q. Now, Mr. Lynn, the second charge against Mr. Terrell is to the effect that he violated Article 4345, in that he has continuously during his term of office, with the exception of one month, passed his accounts, the accounts of his department, the Comptroller's Department and the State Treasurer's Department, to the State Treasurer for payment, without having first secured the approval of the Secretary of State as provided by law. State whether or not your investigation bears out that that has been done by Mr. Terrell?

A. Yes, sir, our investigation discloses the fact that such accounts were passed to the Treasurer without being approved by the Secretary of State for a long period of time, had only ceased about the end of 1929 or beginning of 1930.

Q. Was that even after the matter was called to the attention of the Comptroller?

A. That was after we had requested an opinion from the Attorney General in regard to the matter.

Q. Now, you say, I believe, that since that time the requirements of that article have been complied with?

A. I am sure that one pay roll has been approved by the Secretary of State. It may be that one pay roll has not been approved. There was considerable discussion as to whether or not it would be approved, a number of conferences were had with the Secretary of State.

Q. In charge 3 it is set forth that the Comptroller violated Article 4348, in that he has not kept an account of the

payments out of the various local funds of the State departments and institutions, and receipts thereto, together with the disbursements of same. Do you know whether or not your investigation throws any light upon that?

A. I am quite sure the Comptroller has not kept record of any funds than those that actually passed through the Treasury Department, and these same accounts disclosed the fact that there are millions of dollars received and disbursed that never passed through the Treasury and which, as far as we could learn, the Comptroller never has any record of.

Q. You set forth in your report, the basis of which is charge 4, that he also violated Article 4357, in that he failed to keep an alphabetical list of claims, as the law provides?

Q. What are the facts as to that charge?

A. I and other members of my department tried to find that alphabetical list, and we were never able to find it.

Q. Well, in attempting to find this alphabetical list, state whether or not you requested the Comptroller, either in writing or orally, to furnish you or allow you to inspect this alphabetical list of claims?

A. He was requested in writing to furnish that list—furnish a list and furnish us information in regard to that list.

Q. Well, what was the result of this request, if any, did Mr. Terrell ever exhibit any alphabetical list of claims?

A. No.

Q. Or did you ever get to see any?

A. No such list was ever exhibited, and we received a letter stating that there was no such list.

Q. Your report also charges Mr. Terrell with having violated Article 4363, in that he has failed to keep a record of all the State-owned bonds, and also failed to reconcile said accounts with similar accounts required to be kept by the State Treasurer, and further that the Comptroller has made no quarterly balances. State what you found in regard to this matter by virtue of your investigation?

A. I found that there is a record of State-owned bonds, but this does not include all State-owned bonds; and at the same time, record of a good many other bonds—permanent school funds, and all those—are not included in the record, and as far as we were able to learn there was no record of a number of other bonds.

Q. Well, state whether or not you

found or were shown a record of any other bonds except public school bonds, bonds owned by the permanent school fund?

A. That is my recollection, it was owned by the permanent school fund, and not complete of those.

Q. You charge in your report that Mr. Terrell also violated Article 4364, in that he has not kept control accounts for tax collectors covering current and delinquent taxes. Please explain the basis of that charge?

A. There are control accounts kept for current taxes, and when taxes are delinquent they are simply written off and no control is kept for delinquent taxes due the State of Texas.

Q. Now, what do you mean by no control exists as to delinquent taxes?

A. No total amount, no place in that department where you can ascertain the total amount of delinquent taxes due the State.

Q. Now, how did you ascertain that information?

A. We made investigation in the Comptroller's Department and asked if such a record existed. We were never able to find any such record of the total amount of delinquent taxes due. We made a diligent search for the delinquent tax record.

Q. You charge him also as having violated Article 4368, in that he has failed to examine the Treasurer's disbursements. What, if anything, are the facts in connection with the charge, so far as you were able to ascertain them?

A. He makes no examination of the Treasurer's disbursements.

Q. Well, how did you go about getting that information, by conference with the Comptroller or Treasurer, or in what manner did you proceed?

A. I am quite sure we inquired about that in the Treasurer's Department.

Q. Did you at any time ever call this matter to the attention of the Comptroller and get any direct information from him?

A. We wrote a letter to him on that, but have received no answer.

Q. You here also charge him with having failed to cancel warrants to prevent future circulation. What kind of warrants have you reference to there?

A. I mean warrants issued by the Comptroller's Department and countersigned by the Treasurer for the purpose of making payments out of the State Treasury. These are paid by the Treasurer and canceled by the Treasurer, but the Comptroller has no part in such cancellation.

Q. Now, under that system or by following that practice, would it be possible, or easily possible for the same warrant to be paid out more than one time by the State of Texas?

A. It would be. In fact, the records of the State indicate that such things have happened in times past.

Q. You also charge him with the failure to supervise receipts and deposits of the Treasurer. Now, state whether or not that charge is based on your investigation, or has a basis on your investigation?

A. As far as I can learn, he takes no supervision whatever of the Treasury Department.

Q. Now, Mr. Lynn, if that is true, then state whether or not any other officer under the law supervises or checks the receipts and disbursements of the Treasurer, is there any officer provided for by law, other than the Comptroller, who is charged with that duty?

A. The only place that that would possibly belong would be with the State Auditor; he is authorized to check all departments. That is only a recent creation, and for years no one except the Comptroller had anything—yes, I beg your pardon, the Attorney General had the right to do that also. The Comptroller was specifically authorized to make those audits of the Treasury.

Q. You also charge the Comptroller in connection with this article that he has not checked the balances of money on hand in the State Treasury. State whether or not that is true or false—that charge?

A. As far as we have been able to learn from our inquiries, he has not made any check or audit of the Treasurer.

Q. Well, is there any other person besides the Comptroller who is charged with that duty?

A. As I stated a moment ago, none than to a certain extent the State Auditor.

Q. Now, before the State Auditor's office was created, was there any officer other than the Comptroller who had the right to make that check?

A. Yes,—I should have included the Attorney General; the Attorney General had the right also to do that.

Q. Well, now, when the Attorney General would go to make these checks,—state whether or not he would be able to do that by the records of his own office or whether he would have to go to the Comptroller's office and see

the records there in order to make that check?

A. If the accounts had been kept according to law, the Attorney General could easily have gone to the Comptroller's office and obtained full data with which to audit the Treasury Department in a very short time.

Q. What I want is for you to tell this House whether or not the Attorney General has any records in his office which would enable him to make that check, or whether the only records that are available to the Attorney General are those which are supposed to be kept in the Comptroller's Office?

A. The Attorney General has no records of his own on which to base an audit; he would have to depend entirely on the Comptroller.

Q. Mr. Terrell is charged in specification 8 with encouraging and assisting and benefiting by an organization, or by the organization of a delinquent tax collecting agency by members of his Department, employees of his Department, and formation of an organization which was originally composed of employees in his Department and of Mrs. Gladys Terrell, the wife of the Comptroller. State whether or not you investigated these matters?

A. I investigated those matters, and found that to be a substantial statement of the facts.

Q. What did you find to be the name of the organization that was formed, if such organization was formed?

A. Texas Tax Record Company, a corporation.

Q. Do you know when that corporation was formed and who composed its original organizers?

A. It was formed in December, 1928. The organizers were A. P. Bagby, Jr., A. G. Martin, and Mrs. Gladys Terrell.

Q. At that time, do you know whether or not Mr. Bagby or Mr. Martin were employees of the Comptroller's Department?

A. They were both on the Comptroller's Department payroll at that time.

Q. When did you ascertain this information as to the organization of this corporation by the individuals you have just named?

A. We examined the charter in the Secretary of State's office, and also examined the franchise tax returns in her office. We have made other inquiries, too. We learned from the notary public the identity of the persons who formed the corporation.

Q. Well, as a matter of fact, the

charter discloses in the acknowledgment by the notary the persons who signed the articles of incorporation, does it not?

A. Yes, sir.

Q. Mr. Lynn, state whether or not the result of your investigation disclosed any facts concerning Mr. Terrell's taking any interest in this corporation or in its operations?

A. Yes. We have learned that he advanced money to the corporation at times, and has also received in an account of his money belonging to the corporation.

Mr. Keeling: Wait just a minute. If the Chair please, we do not want to get in the attitude of making any objections if we can help it, but we want to ask the question, if he had learned this, we would like for him to confine himself to the source of his information and not just state hearsay.

Mr. Petsch: Yes, sir, we will do that.

Q. Now, will you please state what the source of your information is, so it may be determined whether your testimony is proper or improper?

A. Two men working in my department, under my instructions, examined checks submitted to them by Mr. Terrell, and those checks showed that money had been turned over to the corporation by Mr. Terrell.

Q. All right. Now, state whether or not you yourself examined those checks and looked at those checks afterwards?

A. I never looked at those checks.

Q. Well, state whether or not you have photostatic copies of these checks?

A. No, we have no copies of those checks. We have—I have personally seen the check drawn by the tax collector of San Patricio county, payable to the Texas Tax Record Company, which was deposited to the account of S. H. Terrell at the American National Bank.

Q. Do you recall the date of that check?

(The check was produced and handed to Mr. Keeling, who examined it and handed it back to Mr. Petsch.)

Q. Mr. Lynn, state whether or not this check which you had reference to, or referred to in the testimony you have just given, pertained to that matter?

A. Yes, sir, this check.

Mr. Petsch: We now offer this check and, if there is no objection, we will just read it into the evidence, the statements on the check, rather than file it and will return the check to the Auditor.

The check is dated at Sinton, Texas, September 4, 1929, drawn on the Central State Bank, payable to the order of A. P. Bagby, President of the Texas Tax Record Company, \$662.13, signed C. R. Park, tax collector; with notation on the left-hand corner, showing what it was given for by the tax collector. The endorsements are by Mrs. Gladys Terrell, A. P. Bagby, Jr., President of the Texas Tax Record Company. Endorsed, Mrs. Gladys Terrell and S. H. Terrell, and an endorsement by the bank, showing that the check was deposited—

Q. What bank?

Mr. Keeling: Will you just let me see that check again?

Mr. Petsch: I will give it back; I will give it all to you.

A. It shows to have been deposited in the American National Bank, passed to the American National Bank, but was evidently paid by the Central State Bank. The check is cancelled—cancelled "Paid, 10/2/29."

Q. October 2, 1929. Now, in what particular account was this check deposited—you found that this check was deposited in the American National Bank?

A. Account of S. H. Terrell, Special.

Q. Account of S. H. Terrell, Special? State whether or not you ever had any conversation with Mr. Terrell in which the account was discussed, as to whether this was a private account or an account which he kept for State funds?

A. Mr. Terrell told me at one time that these accounts, special accounts in the American National Bank in the name of S. H. Terrell, Comptroller, were private accounts.

Q. Now, how many accounts did Mr. Terrell have in the American National Bank, as far as you know?

A. Two accounts, one S. H. Terrell, Comptroller, the other was S. H. Terrell, Special.

Q. And this one, I believe you stated—this check, I believe you stated, was deposited in his special account?

A. Special account.

Q. State whether or not you ever had any conversation with Mr. Terrell in which he made any statement as to the accounts, checks, or the use for which the money deposited in these accounts was put?

A. That conversation was not had with Mr. Terrell by myself; my employees had that conversation.

Q. I see. Now, state whether or not

you made any further investigation of any of the activities of Mr. Terrell pertaining to the Texas Tax Record Company, by way of familiarizing yourself with certain correspondence—original correspondence between Mr. Terrell and the county officers of San Patricio county?

A. We obtained copies of certain correspondence between Mr. Terrell and the tax collector. We have these in my files.

Q. Wait just a minute. As a matter of fact, you have your originals now, do you not?

A. I am quite sure they are in our files here.

Mr. Stephens of Hopkins: Mr. Chairman—?

The Chairman: The gentleman from Hopkins?

Mr. Stephens: I move that the call be extended until 6 o'clock.

The Chairman: The gentleman moves that the call be extended until 6 o'clock. Is the call extended?

(Cries of No! No!)

The Chairman: The motion is that the call be extended. As many as are in favor of extending the call until 6 o'clock, vote "yea." Those opposed vote "nay."

Mr. Stephens: Mr. Chairman, we will not insist on this call. If you will dispense with it and let it go on to 5:30—

Mr. Purl: Well, the members will go on out.

Mr. Petsch: We offer the following letter from the State Comptroller to Hon. C. R. Park, tax collector, Sinton, Texas.

(The letter was received in evidence and read by the Reading Clerk, as follows):

Comptroller of Public Accounts.
State of Texas.
Austin.

S. H. Terrell, Comptroller.
J. M. Edwards, Chief Clerk.

Auditing Division.
April 23, 1929.

Honorable C. R. Park, Tax Collector,
Sinton Texas.

My Dear Sir: This will acknowledge receipt of your letter of the 22nd inst., quoting excerpts from a contract, of date December 10, last, entered into by your commissioners court with a company for the collection of delinquent taxes, as follows:

"For the assistance in the collection of both State and county taxes, penal-

ties and interest, is hereby authorized and approved by this court, provided that said Texas Tax Record Company shall receive an amount equal to twenty-five per cent of the collection of delinquent taxes under the provisions of said contract, to be paid out of the proceeds of said collections, from property unknown or unrendered."

You will note that no provision was made for payment of proportional part of the State delinquent taxes collected, therefore, to correct this error, the court passed an order at its regular term, April 1, 1929, providing that said contracting corporation should receive an equal proportionate amount out of the State delinquent taxes collected, as follows:

"Now, therefore, it is ordered, adjudged and decreed that a supplemental and amendatory contract is this day hereby entered into, allowing said company a further compensation at the same rate contracted to be paid by the county, to be paid only out of State delinquent taxes collected, otherwise the original contract herein referred to shall remain in full force and effect."

Under the quotations, above set forth, you inquire as to whether you would be authorized to make deduction of the specified compensation on account of said delinquent tax collections from the date of the contract to April 1, taking credit for same on your monthly report for the month of April.

I respectfully advise that in as much as it appears that the contract was entered into for the collection of both State and county taxes, and that the subsequent order passed by the court was for the purpose of correcting said instrument that you are fully authorized under the terms of said order to make such deduction and take credit therefor.

In support of this position, I respectfully refer you to the cases of Cherokee County vs. A. R. Odem et al., and Madison County vs. Wallace, decided by one of our State Supreme Court on March 20 last.

Trusting that this information will serve your purpose and assuring you that it is a pleasure to serve you at any time, I am, with best wishes,

Yours very truly,

(Signed) S. H. TERRELL,
State Comptroller of Public Accounts.
SHT/ms

Mr. Keeling: What is the date of that letter, Mr. Clerk?

Reading Clerk: April 23, 1929.

Q. Now, Mr. Lynn, from your in-

vestigation, do you know how many separate contracts were entered into between the Texas Tax Record Company and the San Patricio county commissioners court?

A. One contract was entered into in December, 1928, and this was supplemented or amended in—one contract was entered into in December, 1928, and this was supplemented in April, 1929, making the provisions applicable to State taxes as well as county taxes, which had not been included in the first contract. In other words, upon the advice—well, that will be a conclusion.

Q. Do you know whether or not a second supplemental contract was afterward entered into between the Texas Tax Record Company and the county commissioners court of San Patricio county, paying additional compensation to the compensations described in the letter just read?

A. Yes, a contract was made agreeing to pay 12½ per cent for cancellation; I believe this contract was made as late as December, 1929.

Q. Do you know whether or not that contract is still in force and effect?

A. I have been informed by someone, I don't know by whom, that it was cancelled.

Q. Now, Mr. Lynn, state whether or not you labored under difficulties or whether you easily secured the information concerning the operations of the Texas Tax Record Company—that is, whether or not the information was furnished you by the State Comptroller or whether you had to go about it in the best other means available?

A. I had to get the information from other sources. I one time asked the Comptroller for a copy of the contract with San Patricio county, and he wrote me that I had better submit him a letter.

Q. Mr. Lynn, you just testified a while ago concerning the supplemental contract of 12½ per cent which was entered into where this tax collection agency was paid off, charged off. Do you know whether or not that related to both State and county taxes, or just county taxes?

A. I am quite sure that related to State taxes as well as county taxes.

Q. Do you know whether or not that last supplemental contract was made before or after the letter which was introduced and just read into the evidence?

A. That supplemental contract was made after this letter.

Q. I wish you would examine this letter and see whether that is the letter you have referred to as having been written by Mr. Terrell (handing letter to witness)?

A. This is one of the letters. There is another one. Shall I read this?

Mr. Petsch: This letter is dated January 16, 1930, addressed to Honorable Moore Lynn, State Auditor, Austin, Texas (reading same as follows):

Comptroller of Public Accounts,
State of Texas.
Austin.

S. H. Terrell, Comptroller.
J. M. Edwards, Chief Clerk.

January 2, 1930.

Hon. Moore Lynn, State Auditor, Austin, Texas.

Your File No. 1126.

Dear Sir: Replying to your letter with reference to the above file, I beg to state that the law does not require a company organized for the purpose of collecting delinquent taxes to file with this Department a copy of their contract. We have, however, requested the county judge in all instances to furnish us with same, but several counties have failed to do so to date.

Yours very truly,

(Signed) S. H. TERRELL,
State Comptroller of Public Accounts.
SHT/Mc

Q. How do you know, or can you determine from the memoranda, which account you were inquiring about or which contract you were inquiring about in that letter to which the one just read in evidence was the answer?

A. I was inquiring about San Patricio county.

Q. Mr. Lynn, I wish you would examine that letter, please, sir. Are you or not familiar with the contents of that letter?

A. Yes, sir; I have read it before.

Q. It might be unnecessary to introduce the whole letter in evidence. I will ask you whether or not that letter had reference to delinquent taxes?

Mr. Petsch: We will offer the letter in evidence.

Mr. McGregor: We have no objection. The letter was thereupon introduced in evidence, and is as follows:

Comptroller of Public Accounts.
State of Texas.

Austin.

S. H. Terrell, Comptroller.
J. M. Edwards, Chief Clerk.

May 6, 1929.

Mr. C. R. Park, Sinton, Texas.

Dear Mr. Park: We are sending to the county judges throughout the State a letter advising with reference to the Supreme Court overruling the motion for a rehearing in the case of Cherokee County et al. vs. A. R. Odom, thus finally fixing the right of the commissioners court to contract for the collection of delinquent taxes and to allow as compensation therefor a per cent of the taxes collected, for both State and county, said right as to a percentage of the State's taxes heretofore having been held unconstitutional.

The purpose of this letter to you is that in the event such contract has been made in your county, it will be necessary that this Department have a certified copy of all such contracts (request for which has been made of your county judge) before we would have authority to allow you credit for any per cent of the State tax which may be claimed as compensation allowed. Also, that the taxes so collected be designated in some way by segregated list if necessary in order that the Comptroller may have a check on the amount of taxes from which he is to allow credit to the collector.

The amount of credit allowed will, of course, depend upon the literal construction of the contract and its conformity with the law under which it is made. Consequently, if there should be any doubt in your mind regarding commission coming out of State taxes, whether or not such commission should be held in escrow, until status of same is determined, is a matter for your discretion.

It may be that a new form, to be included in your monthly reports, will be provided for listing collections made under contract, regarding which you will be advised in the near future after we have determined more fully the effect of such collections and the most appropriate method of reporting same.

Yours very truly,

(Signed) S. H. TERRELL,
State Comptroller of Public Accounts.

Q. Mr. Lynn, from your investigation, do you know at what place in the State Capitol mail is received which is

addressed to the Texas Tax Records Company at this time?

A. I sent one letter to that company that was receipted by the mail clerk in the Comptroller's office.

Q. How long ago was that?

A. In January, this year, January 16.

Q. One check has been offered in evidence showing that Mr. Terrell had received a check from the Texas Tax Records Company. Do you know of any other checks, or have you any other checks in your possession, which show that Mr. Terrell received any money or any compensation or any value out of this organization?

A. I have no other checks that I know were received by him.

Q. Now, you gave some testimony a while ago concerning some bank accounts which Mr. Terrell had, and you named two accounts in the American National Bank. Now, of the two accounts you have testified about, one was styled S. H. Terrell, Comptroller, Special, and the other was styled S. H. Terrell, Special. Those accounts were both with the American National Bank. Now state whether or not Mr. Terrell had any other bank accounts in which you, as State Auditor, became interested.

A. I believe I will correct that one point. The accounts in the American National Bank, one is designated S. H. Terrell, Comptroller, and one S. H. Terrell, Special. I learned in the course of my investigation that the account in the Texas Bank and Trust Company was in the name of S. H. Terrell, Comptroller, Special, and the one in the Austin National Bank was in the name of S. H. Terrell, Comptroller, Special.

Q. Now, Mr. Lynn, when did you first begin to make an investigation with the view of locating those bank accounts?

A. I want to add a little more to my other statement, and I will say that there was another account in the Austin National Bank in the name of S. H. Terrell, Comptroller. This at the time we examined it had a balance of only 30 cents.

Q. When was that you found the balance of 30 cents?

A. That was recently. There was still a balance of 30 cents.

Q. Was that an active account or an inactive account?

A. It had been at one time an active account, but for some time had been inactive.

Q. For some time, what do you mean?

A. I do not have a transcript of the

account before me; probably for several months, and probably for a year the account had been inactive.

Q. Then there were two accounts in the Austin National Bank that had identically the same style?

A. No, sir; styled differently.

Q. One was S. H. Terrell, Comptroller, and the other was S. H. Terrell, Comptroller, Special, is that correct?

A. Yes, sir.

Q. Now, when did you first make an effort to secure information pertaining to these accounts?

A. Well, about December 19, 1929, I wrote all the banks in Austin, requesting them to furnish me a statement of the balance in all accounts of departments, State departments, State officials, State institutions and State employes, as such. In other words, I wanted to find out about all State money that was kept in bank accounts and not in the Treasury.

Q. Now, you say that was about the 19th of December?

A. That was my letter to the banks?

Q. 1929?

A. December 19, 1929; yes, sir.

Q. Now, at that time or prior to that time, state whether or not you wrote the different department heads concerning the same information.

Q. I wrote department heads just a few days later. I did not write all of the department heads at first. On December 21, however, I wrote the Comptroller, requesting information in regard to any accounts. I did not specify what accounts. I had asked if he would advise me if his Department ever collected funds of any kind that he deposited in some bank, instead of being placed with the Treasurer; and if so, he was to please furnish me information as to the statute under which it was collected, the banks in which the funds were placed, rate of interest allowed, security from the depository, estimated average balance, and the reasons for placing the funds in banks, and final disposition made of the funds.

Q. All right. Now state whether or not you made any further effort to secure information that you wanted concerning those bank accounts.

A. On the 31st day of December I prepared a form letter and sent not only to the banks in Austin, but in all other towns where such institutions or schools or departments were located.

Q. In response to that letter addressed to the banks, how many of such

accounts did you find in which such funds were deposited?

A. All together, I found about eighty such accounts.

Q. Now—

A. In connection with that former question, I state that on the same date I sent a letter to the departments.

Q. On that 31st day of December, 1929, state whether or not you sent a letter to Mr. Terrell's Department, addressed to S. H. Terrell, State Comptroller, Austin, Texas, for the purpose of securing information you wanted?

A. Yes, sir; I sent that form to him also, among the others.

Q. When was the first time Mr. Terrell replied to any of the letters you wrote to him concerning this matter?

A. The first reply I received was dated January 6, 1930.

Q. Have you the original letter?

A. I have.

Q. Now, Mr. Lynn, state whether or not that is the first communication you had from Mr. Terrell in answer to the letters of inquiry you sent to him concerning the bank accounts.

A. Yes, sir.

Q. This letter is dated January 6, 1930, addressed to Honorable Moore Lynn, State Auditor, re your File 1121. Is that the number of your file of the letters which were addressed to Mr. Terrell?

A. That was the file of the first letter sent in.

Q. That was the letter dated about December 19, 1929?

A. Probably the 21st.

Mr. Petsch: The letter reads:

Comptroller of Public Accounts.

State of Texas.

Austin.

S. H. Terrell, Comptroller.

J. M. Edwards, Chief Clerk.

January 6, 1930.

Hon. Moore Lynn, State Auditor, Austin, Texas.

Re: Your File 1121.

Dear Sir: In reply to your letter with reference to the above file number, I beg to advise that this Department does collect fees which are temporarily placed in the bank for collection.

For fees of office, I refer you to Article 3913 for authority; to Article 3065m, gasoline tax refund; to Article 7265, organized county tax; to Articles 7226, 28, 29, 39 and 40, unorganized county tax, and to Article 5095, whisky permit.

All of these proceeds are deposited in the American National Bank of Austin, Texas, on which there is no interest allowed, as it is entirely a matter of clearing these checks and money orders, and there is no security furnished by said depository.

The reason the whisky permit money and the gasoline refunding money is placed in said depository is that these amounts are usually paid by money orders, checks and stamps, which are sometimes turned down and have to be returned.

The final disposition made of these funds is when same are cleared they are placed in the Treasury to the respective funds designated by the statute.

Very truly yours,

(Signed) S. H. TERRELL,
State Comptroller of Public Accounts.
SHT/Mc

Q. Now, when you received that letter, Mr. Lynn, state whether or not you had information and data that Mr. Terrell had this account in the Texas Bank and Trust Company to an approximate amount of \$100,000, and also had the other two accounts in the Austin National Bank, one of the approximate amount of \$54,000 and the other in the amount of 30 cents.

A. I only knew at that time of the balance at certain dates. I did not know anything about the totals that had been deposited in the accounts.

Q. Of course, Mr. Lynn, it was my error. I should have said that the account in the Texas Bank and Trust Company showed that a total of over \$9,000, or a little over \$9,000, had been there deposited, and to the account in the Austin National Bank a little over \$54,000 had been deposited.

A. At that time I had not learned of the totals deposited in the accounts.

Q. State whether or not you have since that time learned the totals of the deposits in those accounts.

A. Yes, sir; I have. Those figures are at least approximately correct.

Q. Now, Mr. Lynn, after January 6, state whether or not you wrote Mr. Terrell another letter in connection with these matters.

A. On January 11 I wrote Mr. Terrell and asked him to furnish me, in addition to the other information, the balance of December 31, 1929, as per his books and the books of the depositories.

Q. Now, state whether or not you received a reply from Mr. Terrell as to this information request.

A. I received a reply dated January 14, 1930.

Mr. Petsch: Now, read Mr. Terrell's reply dated January 14, 1930. We offer the letter in evidence.

The letter was thereupon received in evidence, and is as follows:

Comptroller of Public Accounts.
State of Texas.
Austin.

S. H. Terrell, Comptroller.
J. M. Edwards, Chief Clerk.

January 14, 1930.

Hon. Moore Lynn, State Auditor, Austin, Texas.

Dear Sir: In reply to your favor of the 11th inst., with further reference to File 1121, I beg to state that the American National Bank, which bank is our depository, shows a balance to our credit of \$20,518.10; our books show a balance of \$20,543.37, the difference of \$25.27 being occasioned by the fact that checks in this amount have been charged back to us account nonpayment; however, they have again been sent in for collection.

Referring to Form 201, which you state you sent us, same has evidently been misplaced and we shall thank you to kindly send us another form of this number.

Very truly yours,
(Signed) S. H. TERRELL,
State Comptroller of Public Accounts.
SHT/Mc

Q. Now, Mr. Lynn, at the time this letter was received, state whether or not you were in possession of information which showed the balance which Mr. Terrell had in the bank, the three bank accounts for which he had not accounted to you, that is, the Texas Bank and Trust Company and the two accounts in the Austin National Bank?

A. I knew at that time only of one balance of the Texas Bank and Trust Company and one balance in the Austin National Bank. The bank did not report to us at that time the 30 cents balance which we later learned of.

Q. State whether or not, about that time you wrote Mr. Terrell a further letter pertaining to these deposit matters.

A. I believe there was no further correspondence at that time. I began then to make personal investigation.

Q. All right. What was the nature of your personal investigation, in so far as you had a transaction with Mr. Ter-

rell? Did you or not have any conversations with Mr. Terrell pertaining to these two unaccounted-for bank accounts?

A. Will I be allowed to state that I sent one of my men down to ask for information?

Q. You will only be permitted to state that you sent one of your men. Did you or not send one of your men down to Mr. Terrell's Department for the purpose of securing or finding out whether or not they would recognize these other accounts?

A. Immediately after receiving the letter I sent Mr. Carter down to see if it was possible there was some other account of which we had not been notified.

Q. All right. Now, without stating the conversation which occurred between yourself and Mr. Carter, state whether or not, as the result of the trip or investigation made by Mr. Carter, you got any information as to other bank accounts?

A. I received no information through his trip.

Q. Then, after that time, state whether or not you yourself had a conversation with Mr. Terrell in reference to this matter of these two inactive bank accounts?

A. On the next day after I sent Mr. Carter, which was January 16, 1930, I myself visited the Comptroller's office and in Mr. Terrell's presence I engaged Mr. Edwards, his chief clerk, in conversation.

Q. That is, J. M. Edwards?

A. J. M. Edwards, chief clerk.

Q. You say he is chief clerk?

A. In the Comptroller's Department.

Q. What, if anything, was said pertaining to the bank accounts?

A. I asked Mr. Edwards if it was not possible that there were some accounts we had not been notified of.

Q. What accounts had you been notified of by this time?

A. I had been notified by the bank of the one which—

Q. I am not talking about the bank. What information had Mr. Terrell given you himself, or his office, as to the bank accounts in which were deposited State funds?

A. Only in regard to the account in the American National Bank, S. H. Terrell, Comptroller.

Q. Up to that time, state whether or not Mr. Terrell or his employes, either jointly or separately, admitted to you that they had other bank accounts

besides the one in the American National Bank?

A. Up to that time there had been no such admission.

Q. What conversation, if any, did you have with Mr. Edwards upon this occasion in Mr. Terrell's presence concerning this matter?

A. I asked Mr. Edwards if it was not possible that there were accounts that might be closed at that time on his own books that remained open on the bank books, and he stated that there was no account other than that which I was told of. Mr. Terrell, standing up, joined in the conversation and told me that there was no other account other than the one I had been told about, and that any other accounts he maintained were personal accounts.

Q. Who, if anybody, was present besides yourself, Mr. Edwards and Mr. Terrell?

A. Just the three of us at that time.

Q. Just the three of you?

A. Yes, sir.

Q. Well, state whether or not anything else was said at that time concerning these bank accounts.

A. That is all I recall that took place at that time.

Q. Well, did you or not have a later conversation with Mr. Terrell pertaining to this matter?

A. I went back two days later, on January 18, and at that time I took Mr. Banning with me.

Q. Who is Mr. Banning?

A. Mr. Banning is assistant in my Department; possibly I should say consultant in my Department.

Q. Now, Mr. Lynn, at that time, that was January 13, was it?

A. Eighteenth.

Q. January 18. At that time, state whether or not you had any further correspondence with Mr. Terrell?

A. Conversation?

Q. Correspondence. Did you have any further correspondence with Mr. Terrell before that time?

A. No, sir; I had no further correspondence at that time.

Q. Did you on that occasion have a conversation with Mr. Terrell?

A. Yes, sir.

Q. Well, what was it?

A. I continued my inquiries about other accounts and about one specific item.

Q. What was that item?

A. That was a matter of a \$375 payment by a man named Busick of Amarillo, for occupation tax.

Q. Being that you have started to

tell about that item, state whether or not that item was afterward explained?

A. It was later explained that Mr. Terrell had collected \$375 and had distributed \$285 to different accounts, retaining \$90 in his own possession. That was not the principal subject discussed at that time.

Q. What was it you discussed at that time?

A. The general subject of these bank accounts.

Q. Do you recall whether or not you asked any questions and received any information; asked Mr. Terrell any questions?

A. I asked the question if there were any other bank accounts that he maintained in which State funds were deposited. Mr. Terrell volunteered that he knew we had been investigating his accounts at the Austin National Bank and that he meant to have redress against the bank for giving information to us in regard to his personal affairs. I requested that he produce statements, bank statements, with regard to this Austin National Bank account, and he refused to do that.

Q. That was the account where later investigation showed that some \$54,000 had been deposited, is that correct?

A. Yes, sir.

Q. And he stated to you that was a personal and private account?

A. He told me particularly that it was a personal and private account.

Q. Now, on the date of that conversation, state whether or not he said to you anything concerning an account in the Texas Bank and Trust Company.

A. I believe there was no reference to that account at that time.

Q. Can you recall any other matters with reference to that conversation?

A. Not anything important in that conversation.

Q. Well, then, what did you next do pertaining to these matters, pertaining to these bank accounts?

A. Prepared a letter to Mr. Terrell making official demand for the information with regard to these accounts. This letter was dated January 22, 1930. It is a carbon copy.

Q. It might not be necessary to read the letter in evidence. Can you state the substance and what kind of a demand you made of Mr. Terrell?

A. The request, of course, was made in writing and was presented by myself in person, in the presence of Mr. Carter and Mr. Banning, both connected with my Department. I called his attention to the fact that on January 18 I de-

manded access to bank statements, cancelled checks and records pertaining to the account in the Austin National Bank. And I said then that the demand I made orally on the 18th I now make in writing; and I again requested him to furnish the representatives of this Department all bank statements, cancelled checks, duplicate deposit slips and other papers or books relative to the account heretofore mentioned in the Austin National Bank, in the name of S. H. Terrell, Comptroller, Special; and also the account in the Texas Bank and Trust Company in the same name. I notified him that I considered those records as being a part of the State's records.

Q. (By Mr. McGregor): So that would be clear, you stated—

A. I was asking about accounts in which at that time I knew State moneys had been deposited.

Q. It was State moneys you were inquiring about?

A. I was asking about bank accounts.

Q. (By Mr. Petsch): In order to get the matter clearly in the record, you say you were asking about bank accounts which from your investigation you knew had been deposited, is that correct?

A. That is correct.

Q. Now, after you handed Mr. Terrell this letter, state whether or not you had any conversation with him.

A. Yes, we had considerable conversation on that day. I made some notes.

Q. These notes that you are testifying from, when were those notes made?

A. The notes I have testified from heretofore were made by myself, made after the conversation. These notes were not made by myself. I will leave that out. That was made by Mr. Banning, made after the conversation took place. Those are Mr. Banning's notes.

Q. I understand Mr. Banning was present at the time that conversation took place?

A. He was.

Q. Well, without reference to those notes, just recall what you remember about the conversation with Mr. Terrell concerning the matters referred to in your letter which you have just read from the carbon copy.

A. I insisted on receiving information with regard to these accounts, and Mr. Terrell finally admitted that he might have at some time collected State money through these accounts. I asked him how he would know when to pay them out of there, and did he keep a

record of any kind, and he told me he kept no record whatever; that Mr. Martin and Mr. Byrne had kept such record.

Q. Were Mr. Martin and Mr. Byrne there?

A. Mr. Martin is now deceased, but he was until probably last July chief supervisor of the Oil and Gas Division. Mr. Byrne, I believe, holds that position now.

Q. Now, in connection with the conversation, state whether or not Mr. Terrell, yourself and the other parties who were with you went down to see Mr. Byrne?

A. I finally insisted on having information about these accounts. I asked him if he would phone Mr. Byrne and tell him to give the information. Mr. Terrell volunteered that he would go with me, and at that point Mr. Carter left the Department and went to another department. Mr. Banning, Mr. Terrell and myself went back to Mr. Byrne's desk there, and Mr. Terrell interrogated Mr. Byrne as to what record he kept. Mr. Terrell rather insisted that Mr. Byrne kept some record. I talked with Mr. Byrne, and he said he kept a pencil memorandum, and it was destroyed.

Q. What accounts were discussed with Mr. Byrne?

A. These bank accounts in the Austin National Bank and the Texas Bank and Trust Company.

Q. At this time, the account in the Texas Bank and Trust Company had already been mentioned, had it?

A. Yes, sir.

Q. And Mr. Terrell, you say, insisted that Mr. Byrne ought to have a record?

A. Yes, sir. Mr. Byrne said that in some cases he kept a pencil memorandum, and destroyed it; and finally, after some insistence, he said he did not know where the record would be, unless it was in the old audit book in Mr. Holden's office.

Q. Then state whether or not you attempted to get the old audit book in Mr. Holden's office.

A. After Mr. Terrell left the party to go out of the room, Mr. Banning and I and Mr. Byrne went to Mr. Holden's office, and the book was produced.

Q. Now, you cannot testify to any conversation that took place, but just what records generally did you examine, if you examined any records?

A. I ran through this book and found an account called money collected,

checks held in escrow. We have a photostat of that account.

Q. You have a photostat of that account?

A. Yes, sir.

Q. All right.

A. We have a photostat of that account.

Q. You say you have a photostat of that account? That is the account which is set out in your first report, Auditor's report?

A. Yes, sir; a copy of that account is reproduced in our first report.

Q. Did you at that time have any conversation with Mr. Terrell concerning that account? Do you recall whether Mr. Terrell came back?

A. Mr. Banning and I looked at the account for a few minutes and then went into Mr. Terrell's office, with the book open at this place.

Q. What, if anything did he say?

A. Mr. Terrell seemed to be a little bit confused, perhaps, on presentation of that account. I asked him particularly what those accounts there represented. Is it necessary to produce that record?

Q. Let's recall the amounts. This account of "moneys collected, checks held in escrow," is the account or exhibit which is listed as Exhibit A on page 23 of your first report, the report dated January 27, 1929?

A. It would be on page 21 of that report.

Q. Is your memory refreshed as to any items that were discussed by looking at the exhibit before you?

A. I asked Mr. Terrell particularly about the items shown as paid by the Magnolia Petroleum Company, as to what those were for, and why they were retained, if they were retained.

Q. What was the total amount of the items shown to have been deposited in the Comptroller's Department by the Magnolia Petroleum Company, as per that record?

A. Something over \$6,000, \$6,312.74.

Q. What, if anything, did Mr. Terrell tell you had become of this money, this \$6,312.74?

A. He told me he had it in his personal account.

Q. Had it in his personal account. Well, in what bank did he say it had been deposited?

A. He didn't specify what bank it was in.

Q. Well, at that time, state whether or not Mr. Terrell made any explanation as to what kind of funds these were, as to whether they were State

funds or private funds, or trust funds, or what they were?

A. Mr. Terrell first stated he believed they were accounts paid in in suspense or in escrow, pending a decision by the court in regard to payment of gasoline tax on gasoline sold to the United States government. In talking to him a few minutes later he said the amounts were held by him on account of an agreement between Mr. Martin and these oil companies, and he stated at that time that the amounts were not State money, and they were not to be returned to the companies, and they were never to go into the Treasury; that he was holding them on account of an agreement between Mr. Martin and those companies.

Q. Well, in connection with the conversation, state whether or not you found out from him what that agreement was.

A. I inquired as to the agreement, and he refused to give me any further information about the agreement, but said he had a good reason for holding the funds.

Q. Well, I don't know, maybe I have asked this question, but in that conversation, state whether or not Mr. Terrell told you in what bank he had deposited these funds, to what bank account and what bank?

A. No, I am sure he did not tell me in what bank they were deposited.

Q. Did you or not afterward ascertain in what bank those funds had been deposited?

A. We traced all of those direct to the Texas Bank and Trust Company or the Austin National Bank.

Q. All those items of the Magnolia Petroleum Company were deposited either in the Texas Bank and Trust Company or the American National Bank?

A. And all the other items in that account.

Q. What were some of the other items in that account?

A. An item of Independent Oil Company, San Angelo.

Q. What is that amount?

A. \$2,334.89.

Q. Now, Mr. Lynn, state whether or not, from the investigation you have made, you can now say whether or not either this amount which had been sent in by the Magnolia Petroleum Company or the amount paid in by the Independent Oil Company in the sum of \$2,334.89 had been deposited in the State Treasury.

A. None of those amounts had been

deposited in the State Treasury at that time.

Q. State whether or not either one of those amounts have been returned to those two oil companies up to the present time.

A. Of course, I cannot testify as to what happened up to the last few days, but at the time I wrote the Magnolia Petroleum Company soon after this occurrence took place they stated that the funds had not been returned to them, and I had a conversation with one of their representatives today, and I understand it has still not been returned to them.

Q. You cannot testify to your conversation.

A. We immediately corresponded with the company. We had correspondence with the Independent Oil Company, and they stated that the funds had not been returned.

Q. Since that time, state whether or not you have had occasion to examine letters or receipts which purport to be original receipts issued by Mr. Terrell to the Magnolia Petroleum Company covering these funds.

A. Yes, sir; I have examined letters.

Q. Have you those in your possession?

A. I think they are in our file at this time. They are originals or photostatic copies.

Mr. Purl of Dallas: Mr. Chairman.

The Chairman: The gentleman from Dallas.

Mr. Purl of Dallas: Mr. Chairman, I would like to ask Mr. Petsch if it would interrupt his thought if we recess now?

Mr. Petsch: Maybe we had better finish this one item.

Mr. Purl of Dallas: How long will it take?

Mr. Petsch: About five minutes.

Mr. Purl of Dallas: All right. Mr. Chairman, I move that the Committee rise and report progress and ask leave to sit again tomorrow at 9:45.

Mr. Sanders of Nacogdoches: Mr. Chairman, I move that the Committee rise and report progress and ask leave to sit again at 8 o'clock tonight.

The Chairman: The Chair will make this observation: I hope we can stay with this investigation, since we are into it, stay on the job and try to complete it as soon as possible. If the Committee can put in two hours tonight, I am sure we will get a long way on it. If we can judge from the remarks I hear around the Hall, we will not have a quorum here, and we will go into next

week, and it will drag along, and we will take two or three weeks.

Mr. Petsch: Mr. Chairman, may I make a suggestion? As far as the Committee for the House is concerned, it will be agreeable to work tonight. We have several members who would hardly be able to stay out here tonight, and if they are not here tonight we will not have a quorum. So we are faced with that situation. It would be my own individual suggestion that we begin working a little earlier. We might begin work, say, on this investigation at 9 o'clock and have our other preliminary matters come up before that time.

The Chairman: Make it 9 o'clock.

Mr. Purl of Dallas: I will be glad to amend my motion to meet at 9 o'clock. I, therefore, ask the consent of the House to change my motion to make it 9 o'clock tomorrow morning.

The Chairman: Mr. Sanders, do you withdraw your motion to meet at 8 o'clock tonight?

Mr. Sanders of Nacogdoches: Yes, sir; I withdraw it.

The question was thereupon taken, and the motion prevailed.

THURSDAY, FEBRUARY 20, 1930.

Morning Session.

Pursuant to adjournment of the House at 6:05 p. m. Wednesday, February 19, 1930, the House reconvened at 9:25 a. m. Thursday morning and on motion of Mr. Keller of Dallas, the House resolved itself into a Committee of the Whole, whereupon—

The Chairman: Is the Committee ready to proceed?

Mr. Petsch: Yes, sir.

The Chairman: The Committee will please be in order.

Mr. Petsch: Gentlemen of the Committee, on the part of the House at this time we desire to offer in evidence, form receipts and letter receipts from Mr. Terrell's department, concerning the escrow funds of the Magnolia Petroleum Company. The first letter is dated September 25, 1925, addressed to the Magnolia Petroleum Company, Dallas, Texas, and is as follows:

Comptroller's Department.
State of Texas.

Austin, September 25, 1925.

Hon. A. S. Hardwicke, Assist. Gen. Att'y, Magnolia Petroleum Company, Dallas, Texas.

My Dear Sir: Replying to your letter of the 24th instant, I beg to advise that

it will be agreeable with this office for you to remit gasoline sales tax on sales made to United States government, as referred to in your letter.

Remittances of this character are deposited to the credit of an escrow fund account, and in the event the Supreme Court holds that such tax is collectible by the State, such fund will be deposited in the State Treasury; otherwise, such will be promptly refunded to you.

Assuring you that it is a pleasure to serve you at all times, I am,

Very truly yours,

(Signed) S. H. TERRELL,

EJM-fs

Comptroller.

Mr. Petsch: This letter shows to have been dictated by E. J. Martin and signed by E. J. Martin. There are some pencil notations on the letter, or the photostatic copy of the letter, which we are not offering because they were made by some parties other than Mr. Terrell, or anyone in the Comptroller's Department.

Next, I am reading from the photostatic copy of the letter addressed to Mr. D. A. Little, Assistant Treasurer, Magnolia Petroleum Company, Dallas, Texas, dated November 27, 1925, and is as follows:

Comptroller's Department.

State of Texas.

Austin, November 27, 1925.

Mr. D. A. Little, Assistant Treasurer, Magnolia Petroleum Company, Dallas, Texas.

My Dear Sir: I beg to acknowledge receipt of your company's checks on account of gasoline sales tax to the United States government, as follows:

| | |
|----------------------|------------|
| August, 1925..... | \$1,472.80 |
| September, 1925..... | 1,332.60 |
| October, 1925..... | 1,473.34 |

The above checks being held in escrow in accordance with my letter of September 25th last.

This letter will serve as a receipt, in as much as regular form of official receipt countersigned by the State Treasurer, can not issue by reason of the fact that these funds are not transmitted to the Treasury.

Very truly yours,

(Signed) S. H. TERRELL,

EJM-fs

Comptroller.

This letter shows to have been dictated by E. J. Martin and signed by Mr. Terrell personally. The pencil notations on the letter are not offered.

Mr. Petsch: We next offer letter of January 25, 1926, addressed to the same parties and signed by the same party, reading as follows:

Comptroller's Department.

State of Texas.

Austin, January 25, 1926.

Mr. D. A. Little, Assistant Treasurer,
Magnolia Petroleum Company, Dallas,
Texas.

My Dear Sir: This will acknowledge receipt of your company check in the sum of \$1262.40 on account of gasoline sales to the United States government, which check will be converted into cash and the funds held in an escrow account, as in the past in this matter.

Receipt is also acknowledged for your check for the previous month in the sum of \$631.20.

Very truly yours,
(Signed) S. H. TERRELL,
EJM-fs Comptroller.

This letter is dictated by E. J. Martin, and signed by Joe Edwards, Chief Clerk in the Comptroller's Department, I believe.

Mr. McGregor: You mean the physical act of signing same?

Mr. Petsch: Yes, sir. Mr. Terrell's name is signed to the letter by Mr. Edwards, his Chief Clerk. The first and third letters are signed S. H. Terrell, but the signature was actually signed by Mr. Edwards, his Chief Clerk, while the second letter was signed by Mr. Terrell himself.

I am now reading from the photostatic copy of the letter addressed to the Magnolia Petroleum Company, dated March 3, 1926.

Comptroller's Department.

State of Texas.

Austin, March 3, 1926.

Mr. D. A. Little, Assistant Treasurer,
Magnolia Petroleum Company, Dallas,
Texas.

My Dear Sir: This will acknowledge receipt of your company check No. T-20001 in the sum of \$140.40, on account of gasoline sales to the United States government which check will be converted into cash and the funds will be held in an escrow account, as in the past in this matter.

This will also acknowledge receipt of check in the amount of \$1262.40 for the previous month. I made acknowledg-

ment of this check in my letter of January 25th.

Very truly yours,
(Signed) S. H. TERRELL,
JWB/fs Comptroller.

The signature on this letter being affixed by Joe M. Edwards, Chief Clerk of the department, and the letter dictated by J. W. Byrne, an employee of the department.

Mr. McGregor: Mr. Petsch, did you say that letter—the signature was affixed by J. M. Edwards—that letter was dictated by J. W. Byrne, but the signature was affixed by J. M. Edwards, the Chief Clerk of the Comptroller's Department?

Mr. Petsch: That letter was signed by Mr. Edwards for the Comptroller, the present Chief Clerk of the department, but it was dictated by Mr. Byrne—

Mr. Petsch: Now, Mr. Lynn, state whether or not you are—whether or not your investigation disclosed that any other amounts were held in escrow under the several items listed, and the dates of those?

A. The escrow account shows several accounts—I believe I have that information here—

Q. What do you mean?

A. Well, we also found that the inheritance taxes in some instances were held in escrow.

Q. Now, before we go into those matters—did you find other funds held in escrow that had been remitted by oil companies?

A. There were several other items shown on this escrow account, but nothing to show for whom they were held.

Q. What about the account of the Keeling Oil Company?

A. Well, \$325.00 had been paid by the Keeling Oil Company and there was also in escrow \$2334 and some odd cents in escrow for account of the Independent Oil Company of San Angelo.

Q. What was that last amount—

A. I forget the exact amount—I have it here—\$2334.84.

Q. And the Keeling Oil Company, I believe you stated that that was three hundred and twenty some odd dollars?

A. Three hundred and twenty-five dollars—that was composed of three separate checks.

Q. Now, you just said something about some inheritance tax items. How many inheritance tax items did you discover that had been received by the Comptroller and, apparently had not been accounted for at the time you discussed the matter with him?

A. We found two of these.

Q. Did you at any time ever call the attention of the Comptroller, or request information from the Comptroller as to these two particular items?

A. Yes, sir. In my letter of January 24, 1930, I discussed that particular item—those particular items.

Q. In your letter to whom?

A. S. H. Terrell, Comptroller.

Q. Do you know whether or not he received that letter?

A. Yes, sir; it was sent to him by registered mail and I hold his receipt.

Q. Have you had any reply from him to your letter?

A. Yes, sir, I have his reply to it.

Q. Now, Mr. Lynn, you just stated awhile ago that you wrote Mr. Terrell two letters to which he replied as per his letter of January 28th?

A. Yes, sir.

Q. Besides the two inheritance tax items, were any other items mentioned in the letter?

A. Yes, sir.

Q. State whether or not, Mr. Lynn, this is a carbon copy of the letter that you wrote to Mr. Terrell on January 24, 1930?

A. Yes, sir, it is. Here are carbon copies of the two letters that were written on that date.

Q. You wrote Mr. Terrell, the Comptroller, two letters on that date?

A. Yes, sir.

Q. Now, reading from the carbon copy of the letter dated January 24, 1930, addressed to Hon. S. H. Terrell, Comptroller:

January 24, 1930.

Hon. S. H. Terrell, Comptroller of Public Accounts, Austin, Texas.

Dear Sir: On the statement attached you will find list of the deposits made in the Texas Bank & Trust Company in the name of S. H. Terrell—Comptroller, Special, and those made in the Austin National Bank in the same name.

You informed me yesterday that some of your records in respect of these bank accounts had been destroyed.

Will you be kind enough to look over the attached list of deposits and furnish this department a statement of any items that you can positively identify as being personal, together with full information in regard thereto? We are using our best efforts to clarify the situation in regard to these accounts and are, of course, seriously handicapped on account of the records being incomplete.

If you can furnish any assistance in

this respect it will be greatly appreciated.

Yours truly,

ML-S

State Auditor.

The Austin National Bank,
Austin, Texas.

| Date of Deposit. | Amt. of Deposit. |
|-------------------------|------------------|
| April 7, 1925..... | \$ 957.00 |
| June 10, 1925..... | 26.32 |
| June 12, 1925..... | 4,043.96 |
| June 19, 1925..... | 3,939.43 |
| June 26, 1925..... | 2,334.84 |
| June 30, 1925..... | 1,606.58 |
| July 22, 1925..... | 553.76 |
| July 27, 1925..... | 653.92 |
| August 14, 1925..... | 15.00 |
| December 29, 1925..... | 6,392.42 |
| January 6, 1926..... | 3,447.99 |
| January 18, 1926..... | 500.00 |
| January 30, 1926..... | 2,625.07 |
| February 9, 1926..... | 250.00 |
| February 26, 1926..... | 50.00 |
| March 20, 1926..... | 4,195.86 |
| March 20, 1926..... | 18.00 |
| March 20, 1926..... | 250.00 |
| No date..... | 84.26 |
| November 18, 1926..... | 25.00 |
| January 12, 1927..... | 380.62 |
| April 30, 1927..... | 1,200.00 |
| May 17, 1927..... | 850.00 |
| June 23, 1927..... | 166.66 |
| August 31, 1927..... | 1,000.00 |
| March 13, 1928..... | 400.00 |
| April 28, 1928..... | 1,912.50 |
| June 14, 1928..... | 326.64 |
| June 22, 1928..... | 100.00 |
| July 23, 1928..... | 100.00 |
| August 18, 1928..... | 100.00 |
| September 20, 1928..... | 100.00 |
| October 1, 1928..... | 2,795.50 |
| October 19, 1928..... | 100.00 |
| November 20, 1928..... | 100.00 |
| December 19, 1928..... | 100.00 |
| January 16, 1929..... | 100.00 |
| February 18, 1929..... | 500.74 |
| March 19, 1929..... | 100.00 |
| March 29, 1929..... | 928.94 |
| April 17, 1929..... | 333.33 |
| April 23, 1929..... | 286.32 |
| May 15, 1929..... | 333.33 |
| May 24, 1929..... | 286.32 |
| June 13, 1929..... | 172.29 |
| June 20, 1929..... | 619.66 |
| July 19, 1929..... | 50.00 |
| July 31, 1929..... | 286.32 |
| August 16, 1929..... | 1,036.37 |
| August 26, 1929..... | 286.35 |
| September 6, 1929..... | 400.00 |
| September 11, 1929..... | 1,000.00 |
| October 2, 1929..... | 400.00 |
| October 16, 1929..... | 1,150.00 |
| October 31, 1929..... | 375.00 |

| Date of Deposit. | Amt. of Deposit. |
|------------------------|------------------|
| November 6, 1929..... | 889.92 |
| November 14, 1929..... | 1,000.00 |
| November 14, 1929..... | 333.33 |
| November 28, 1929..... | 400.00 |
| December 13, 1929..... | 1,375.00 |

Texas Bank and Trust Company,
Austin, Texas.

| | |
|-------------------------|-----------|
| September 23, 1925..... | \$ 775.94 |
| October 14, 1925..... | 1,472.80 |
| March 19, 1926..... | 140.40 |
| June 5, 1926..... | 6,609.28 |
| August 19, 1926..... | 200.00 |
| September 30, 1926..... | 100.00 |

Mr. Petsch: Mr. Lynn, why did you send your letter requesting identification of the funds in those deposits which were personal—what, if anything, had been said by Mr. Terrell concerning these deposits on the day before as to whether or not they were personal or if they were personal accounts?

A. On the 22nd and possibly on the 23rd also, Mr. Terrell stated positively that these two accounts were personal accounts and indicated that the greater part of the deposits were personal and private funds, though there might possibly have been a few State funds passing through that account, but the general trend of his conversation was that they were personal funds that were included in those deposits.

Q. Now you have already stated that Mr. Terrell replied to that letter on January 28th. State whether or not in that reply he offered any explanation, or gave you any check of those accounts showing what were personal and what were State funds?

A. Not definitely. You can read what he did say about it. I will read you what he says about that. "Answering your inquiry, you are respectfully advised that each of the items about which you inquire passed over two desks in my department filled by appointees of mine who have recently died.

Two of the items about which you inquire are as follows:

January 19, 1926. Estate of Margaret M. Griffith, \$1,336.00.

March 1, 1926. Estate of William O. Allison, \$4,195.86.

Mr. Petsch: That was the explanation that he offered as to which was personal and which was State funds?

A. Yes, sir.

Q. Now, is this carbon copy of the letter which I hold in my hand the carbon copy of the letter that you

wrote Mr. Terrell in reference to that matter?

A. Yes, sir.

Q. The Clerk will read the letter:

January 24, 1930.

Hon. S. H. Terrell, Comptroller of Public Accounts, State of Texas, Austin, Texas.

In Re: Collections in Escrow.

Dear Sir: The bookkeeping records of your department contain a memorandum account entitled "Money Collected—Checks held in Escrow." On the debit side of this account appear the following items:

| | |
|---|------------|
| Sept. 29, 1925, Magnolia Pet. Co. | \$1,472.80 |
| Oct. 26, 1925, Magnolia Pet. Co. | 1,332.60 |
| Nov. 25, 1925, Magnolia Pet. Co. | 1,473.34 |
| June 26, 1925, Independent Oil Co. | 2,334.89 |
| Dec. 22, 1925, Auto Supply Co. | 28.85 |
| Dec. 24, 1925, Magnolia Pet. Co. | 631.20 |
| Jan'y 25, 1926, Magnolia Pet. Co. | 1,262.40 |
| Feb'y 24, 1926, Magnolia Pet. Co. | 140.00 |
| E. N. Eddleman, Rec. April 29, 1926, Sunshine Consolidated Oil Co. | 4,599.03 |
| Aug. 13, 1926, Keeling Oil Co. | 200.00 |
| Sept. 28, 1926, Keeling Oil Co. | 100.00 |
| Oct. 30, 1926, Keeling Oil Co. | 25.00 |

Please inform me immediately what, if any, of the foregoing amounts have been paid into the Treasury or returned to the company which made the remittance. In the event that any of the items have been deposited with the Treasurer, kindly give the date and deposit warrant number.

Correspondence filed in the Inheritance Tax Division indicate that you received and placed in escrow payments on account of inheritance taxes as follows:

January 19, 1926, Estate of Margaret M. Griffith, \$1,336.00.

March 1, 1926, Estate of William O. Allison, \$4,195.86.

In this connection, will you please advise me as to whether or not money has been returned to either of the estates or deposited with the Treasurer, giving dates and details of the final disposition of each item.

Yours truly,

PB-J

State Auditor.

Q. Now, in line with the last paragraph of the letter just read, you requested Mr. Terrell to furnish you with a statement showing which of the above amounts was deposited, which were deposited in escrow, had been turned over to the Treasurer. Will you state whether or not Mr. Terrell ever complied with that request?

A. Yes, sir; he replied to that in his letter of January 28, 1930—that part of his letter—in the next paragraph goes on to show relative to inheritance tax, as follows:

“Two of the items about which you inquire are as follows:

“January 19, 1926, Estate of Margaret M. Griffith, \$1,336.00, and March 31, 1926, Estate of William O. Allison, \$4,195.86.

“In this connection, will you please advise me as to whether or not money has been returned to either of the estates or deposited with the Treasurer, giving dates and details of the final disposition of each item?”

Q. Now, you just stated a while ago that in his letter of the 28th Mr. Terrell gave you information concerning the items inquired about. What items inquired about that were given you information about with the exception of the inheritance tax matters—you will recall that the letter to Mr. Terrell inquired about and requested information concerning two distinct transactions. One the money deposited in escrow, which consisted of all remittances by oil companies and the other matter on the subject of inheritance taxes. State whether or not he gave you information as to the first matter, whether or not the escrow matters deposited by the oil companies have been cleared by the deposit by him with the State Treasurer?

A. He merely listed the amounts paid by the Keeling Oil Company, amounting to \$325, a very small part of the—

Q. Did he add anything to clear up the items, of the Magnolia Petroleum Company and the Independent Oil Company, further than you have already testified about, to enable these matters to be cleared up by depositing same with the State Treasurer?

A. No further assistance was given on his part.

Q. Now, is that the letter (handing witness the letter in question) that you received from the Comptroller, Mr. Terrell, dated January 28, 1930?

A. Yes, sir, that is the same letter. Mr. Petsch: Will the Reading Clerk please read the letter?

The Reading Clerk: Yes, sir—

Mr. Purl of Dallas: I move that the call of the House be extended to 12 o'clock.

Whereupon the Reading Clerk read the following letter:

Comptroller of Public Accounts,
State of Texas.
Austin.

January 28, 1930.

Hon. Moore Lynn, State Auditor, Austin, Texas.

Dear Sir: I am in receipt of yours of January 24th, making inquiry in regard to a list of deposits, and you request that I furnish your Department a statement of any items that I can positively identify as being personal, together with full information in regard thereto. Answering your inquiry, you are respectfully advised that each of the items about which you inquire passed over two desks in my Department filled by appointees of mine who have recently died.

Two of the items about which you inquire are as follows:

January 19, 1926, Estate of Margaret M. Griffith, \$1,336.00.

March 1, 1926, Estate of William O. Allison, \$4,195.86.

You ask that I advise you as to whether or not money has been returned to either of the estates or deposited with the Treasurer. Both of the above mentioned items have been turned in to the Treasurer, as is evidenced by Treasurer's receipts Nos. 2142 and 2141. Your attention is directed to the fact that the item of \$1,336.00 should carry the penalty of \$26.67, which makes a total of \$1,362.67, which has been deposited.

Items reading as follows:

| | |
|---|----------|
| August 13, 1926, Keeling Oil Company C | \$200.00 |
| September 28, 1926, Keeling Oil Company C | 100.00 |
| October 30, 1926, Keeling Oil Company C | 25.00 |

Making a total of.....\$325.00

Each of the above items have been deposited in the Treasury, as evidenced by Treasurer's receipt No. 504.

As to the other items about which you inquire, will state that as the assistants in my Department, as above stated, who handled each of the transactions, are now deceased, I have thought it wise to have an audit made of both those desks and have engaged an auditor, and he is now at work. As soon as the informa-

tion is available I shall be glad to advise you.

Yours very cordially,
(Signed) S. H. TERRELL,
Comptroller of Public Accounts.
SHT-1k

Mr. Petsch: Now, Mr. Lynn, in your letter of January 24, and Mr. Terrell's response of January 28, in your letter of the 24th you inquired about two inheritance tax matters. One the Allison estate and the other the Griffith estate. Now, who was the first person from whom you received any information as to the \$1,362 dollars and some-odd cents which was paid by the Griffith estate—who did you receive that information from?

A. Well, I will just relate the circumstances—just the facts as they occurred. One of my men had examined the deposit slips in the Austin National Bank and found a deposit made on the W. O. Allison estate of \$4,195.86 by the heirs of the estate of W. O. Allison. With that information to go on, Mr. Banning and I went down and talked to Mr. McKay, in the Inheritance Tax Department, on the 22d or 23d of January, 1930. We asked Mr. McKay particularly about the W. O. Allison estate and he went to the dead files and found the file on this estate and explained to us that it had been accidentally placed in the dead files—that it had been placed there by accident—

Q. What time of the day was that?

A. That was just before noon, and Mr. McKay stated that that had been placed there by accident and should not have been placed there, and he promised to look through the files and let us hear from him right after lunch.

Q. That was immediately after lunch—what time in the day was that?

A. It was not later than 2 o'clock. I sent Mr. Banning and Mr. Carter down there ahead of me to look into this matter, and I came along about ten minutes after they did, and when I got there Mr. McKay had pulled out the other and had it on his desk—the file of the Griffith estate. The amount paid by the Griffith estate was \$1,386.00 and about \$26.67 as penalty. We had no way of knowing about that until Mr. McKay brought it out, but as soon as he brought it out we began checking up on it. We did not have any way of knowing about that because there was nothing on the deposit slip from which we could get any information.

Q. What do you mean that there was no information on the deposit slip?

A. There was no information on the face of it.

Q. You mean by that that the deposit slip showed the amount of \$1,336.00 having been deposited on that day of the month, but there was no description on the deposit slip by which the source of the deposit could be identified or by which the deposit was described?

A. There was no description at all, except the account.

Q. In what bank account was this \$1,336.00 deposited, if you recall?

A. Austin National Bank.

Q. Do you know or not—did you or not make a personal examination of a number of those deposit slips in the Austin National Bank?

A. Just a very few of those that I examined personally.

Q. Well, from those deposit slips that you examined personally, can you say whether or not on those deposit slips if there was any kind of marks or which would enable you to identify the deposits, or to make identification of the account, or was the opposite the case?

A. Some could be identified, and some could not. I do not recall what percentage could be identified.

Q. Mr. Banning and Mr. Carter made an extensive examination of those, did they?

A. Mr. Carter examined more of them than anyone else.

Q. Now, Mr. Lynn, how did you find out when Mr. Terrell deposited the inheritance tax money received from the heirs of the Griffith estate, and also from the heirs of the W. O. Allison estate, together with the \$325.00 oil company—how did you find out when that money was deposited with the Treasurer—was that information contained in Mr. Terrell's letter or not?

A. No, sir, we had requested that that money and the deposit warrants covering it be given.

Q. What do you mean by that?

A. That is a receipt that is issued by the Treasurer that the money has been deposited with him. A receipt given by the Treasurer to the Comptroller.

Q. State whether or not you made any investigation for the purpose of determining whether or not, at the time the original \$1,362.67, \$4,995.86 and \$325.00, original moneys, were deposited in the Treasury, or whether there were any different moneys or other funds deposited to cover those accounts?

A. Of course, I know at this time the account in which the funds had been deposited, in the Austin National Bank

and the Texas Bank and Trust Company. I knew that those accounts had been closed, and so I began a search to find out where those funds came from. I sent Mr. Carter to the Treasury Department to try to trace particularly through their records and find out what kind of funds were deposited for this.

Q. Now, you say these accounts where these funds had been deposited were closed. State whether or not an examination of those deposits indicated that those funds were withdrawn from those accounts and placed in other accounts, or whether the examination indicates the opposite, namely, that the moneys that were placed in these accounts, of which these funds were a part, were just gradually checked out?

A. It is very plain that the funds were just gradually checked out, and such items as we have been able to identify were checked out for the purposes than to place them in a depository and hold for that purpose.

Q. Did you at any time have any conversation with Mr. Terrell concerning the matter of who checked out those funds, whether it was Mr. Terrell himself who signed the checks, or whether other persons had authority to sign checks on that account?

A. I don't believe I ever asked him that particular question. He at one time furnished stub books showing the amounts.

Q. Did he at any time exhibit the bank books from the accounts in the Austin National Bank or accounts in the Texas Bank and Trust Company, or any checks or any character of records outside of the stub books, through which or by means of which these funds had been withdrawn?

A. He showed me one or two cancelled checks.

Q. One or two cancelled checks?

A. Yes, sir; probably one or two on each bank.

Q. What, if anything, did he say had become of the remainder or balance of the checks and the balance of the bank statements?

A. He stated that as those were checked up and they ceased to be useful to him they were simply destroyed.

Q. You testified yesterday concerning a conversation as to how Mr. Terrell kept up with whether or not there was any money left in the bank. I believe you covered that yesterday, did you not?

A. I believe so.

Q. Did you or not personally take any part in some of the transactions

concerning the manner or depositing or securing the funds for depositing these inheritance tax items and the Keeling Oil Company item into the Treasury on January 27?

A. Yes, sir. I went to the Austin National Bank and examined their transit records, as they are called, records of checks going out of the city.

Q. Did you or not find out from the Treasury Department, from the State Treasurer, as to what kind of money was deposited to secure these Treasury warrants, as to whether or not it was cash and checks, or whatever it might have been?

A. I did not ascertain that personally. It was ascertained under my direction, if I can state.

Q. State whether or not it was cash?

A. It was not cash. It came in as checks on the local bank.

Q. Did you at any time go down to this bank and ascertain how they secured those cashier's checks from that bank?

A. Yes, sir; I inquired in the bank about that.

Q. What bank was it where you got this information?

A. Austin National Bank.

Q. Do you know which officer?

A. Mr. Casparis was the teller who handled the transaction, but Mr. Hirshfeld I believe is the man that can give the details of how the money came.

Q. He is also an officer of the bank?

A. He is vice-president of it.

Q. From your conversation or records in the Austin National Bank, can you state how much cash was brought over and how much of the remainder of the money, if there was a remainder, was deposited through checks?

A. Well, there was \$1,800.00 in checks passed through that bank that day that all indications were from this source, put in for this purpose.

Q. State whether or not your investigation which was made by you or under your supervision, whether or not from it you can give the names of the parties who contributed by means of these checks to this amount of \$5,800.00 which was deposited in the State Treasury on January 27?

A. I found that Mr. E. G. Grafton, a brother of Ben Grafton, had drawn a check for \$750.00 on the Republic Bank and Trust Company of Dallas; and Mr. Worth House had drawn a check for \$300.00 on the American National Bank of Austin.

Q. Who is Mr. Worth House?

A. He is an employee in the Comptroller's Department.

Q. Who is E. G. Grafton?

A. He is a brother of Ben Grafton, who is an employe in the Comptroller's Department.

Q. Any others?

A. Two other checks.

Q. Who were they?

A. Mr. Conner.

Q. Who is Mr. Conner?

A. Mr. H. H. Conner, in the Comptroller's Department, had contributed \$500.00; and Mr. Powell, another employe, had contributed \$250.00. And we traced all of those items to the banks on which they were drawn.

Q. You mean by that you traced the checks?

A. Beginning with the transit records in the Austin National Bank, we went on back to the banks where the checks were paid and had the checks examined.

Q. I believe you have already stated that those checks were from out of town banks, with the exception of one?

A. Yes, sir; and all were payable to Ben M. Grafton.

Q. State whether or not you have made any investigation, and whether or not from that investigation you are able to testify where the \$4,100.00 cash came from?

A. No, I cannot tell where it came from.

Q. You cannot tell where that came from?

A. No.

Q. From the investigation you have made, were you able to tell from the bank records, or do the bank records show what kind of money was received by the bank then they received this \$4,100.00?

A. No, the records would not show that.

Q. Now state whether or not Mr. Terrell ever admitted to you that the funds deposited in the Austin National Bank in the account of S. H. Terrell, Comptroller, Special, the total deposits of which ran to slightly above \$5,400.00, whether or not those deposits were State funds or personal funds or escrow funds?

A. As far as he ever went on that was to state that there may have been some funds collected through the account.

Q. Let's see whether I understand that correctly. As far as the conversation between himself and yourself went, and the letters that were written pro and con, he only admitted that it was possible that some State funds were collected through those accounts?

A. That was the conversation. Of course, his letter states there, it is not quite clear, it says all the items about which I inquire passed over the desks of two men in his department who had recently died. That does not state whether they were personal funds or State funds.

Q. Now, Mr. Lynn, state whether or not you ever made a complete check of the State Comptroller's office covering the operations of that office since the time Mr. Terrell became Comptroller?

A. No, we have never made a complete check; far from a complete check of it.

Q. Why has not a complete check been made? I mean by a complete check, an audit of the account?

A. I have not had anything like enough men or money to do that work with.

Q. Well, state whether or not you have had time to do the work?

A. No.

Q. So the check has not been made for two reasons, first, because you didn't have the money and men, and, second, because you didn't have the time?

A. Yes, sir.

Q. Now these Auditor's reports you filed with the House of Representatives, just state how you went about preparing these reports; just state how you secured these different records pertaining to the identification of the deposits, of certain deposits, and how you traced them to ascertain whether or not they had been collected through the Treasury, or had been returned, or had been deposited in escrow?

A. My first information was obtained from deposit slips, and then we found the account "Money collected, checks held in escrow" that enabled us to identify a number of other items. In the same book was an account—

Q. Now just with reference to the checks which were received by the department and that you found listed in the account "Money received, checks held in escrow," state whether or not you could identify any of those checks by means of the deposit slips in the banks?

A. We found that deposit slips agreed in a number of cases; and then we also wrote letters to the people, or sent telegrams or got in touch with them.

Q. When you found the amounts of these various remittances by the Magnolia Petroleum Company, and then went to the bank to check matters up on the deposits, state whether or not

the names of the parties who had given the checks were listed on the deposit slips?

A. In some cases only.

Q. I am talking about the Magnolia Petroleum Company?

A. Not in all cases, but the dates were so nearly the same, and the amounts were the same, that we considered it positive identification. In some cases you will find the name of the Magnolia Petroleum Company on the deposit slips. And then we wrote the Magnolia Petroleum Company and got copies of the checks and a statement from them that the money had not been returned.

Q. Now state whether or not the Comptroller's Department ever gave you any information by which you were able to identify the \$2,334.84 remittance of the Independent Oil Company?

A. No, they gave us no information on that point.

Q. State whether or not the deposit slips indicated where that money had come from?

A. I would have to look at the deposit slips. The escrow account shows the amount. It shows on the escrow account of June 26, 1925.

Q. You are now looking at a copy of the original deposit slip of the Austin National Bank.

A. It is a copy made by one of my men.

Q. Do you know who made that copy?

A. I believe Mr. Carter made it.

Q. Have you had any occasion to check whether or not that is correct?

A. No, I have not gone back to the original.

Q. We are not offering that in lieu of the original but state whether or not that copy shows that the amount of \$2,334.84 was identified as being the remittance of the Independent Oil Company?

A. Yes, sir; it shows that.

Q. Well, I am asking whether or not your copy indicates that the original deposit slips gave that information?

A. It indicates they did not, because this is meant to be a copy of the original, an actual copy of it.

Q. Who is in possession of the original deposit slip at this time?

A. That is still in the bank.

Q. State whether or not the deposit slips in either the Texas Bank and Trust Company or the Austin National Bank indicated where the \$325.00 covering the Keeling Oil Company came from?

A. I will have to look those up.

Q. All right, we will skip that. We will not go into the \$325.00 item, or the several items which composed the \$325.00 remittance of the Keeling Oil Company at this time. Either yesterday or this morning you said something about some taxes which were paid by the Al G. Barnes circus, or Al G. Barnes shows. Do you remember what the amount was and when that payment was made?

A. The amount was \$2,458.00, paid October 1, 1928.

Q. Now, Mr. Lynn, state whether or not the information as to where this money came from and as to what become of it has ever been given to you by Mr. Terrell or any of his employes, or did you ever go to work and work that matter out yourself?

A. We had to work it out for ourselves.

Q. Did you or not have information as to what had become of this money at the time you wrote your last report?

A. No, we didn't have full information on that at that time.

Q. Do you remember whether or not you discussed this item in that last report?

A. No, it is not mentioned in there at all.

Q. Now, Mr. Lynn, state whether or not that item of \$2,458.10 has ever been paid into the State Treasury by Mr. Terrell?

A. Not unless within the last few days.

Q. What do you mean by the last few days?

A. Well, it might have happened within the last three or four days possibly.

Q. Now, have you or not totaled up in your reports and in the studies you have made the total amount of moneys that have been unaccounted for so far, and by unaccounted for I mean money that Mr. Terrell has received, either as escrow funds or as tax funds, which should either have been deposited in the Treasury immediately or after the matters in dispute had been decided, and which have not been accounted for by clearance in the Treasury or by remittance to the owners?

A. Yes, sir; I have that information.

Q. What is the total amount?

A. I will have to read it from my notes.

Q. All right. Now, Mr. Lynn, you are going to have to refer to your record to answer this question?

A. Yes, sir.

Q. Now, please read from your record the results of your investigation pertaining to these matters, that is, moneys received by Mr. Terrell which have not been accounted for by his records.

A. Well, this in case of Texas Bank and Trust Company, transfer of balance special account, Austin National Bank, \$775.94.

Q. All right. What is the date of that item, please, sir?

A. September 23, 1925.

Q. State whether or not that was the opening deposit item of the account in the Texas Bank and Trust Company.

A. Yes, sir, the opening item.

Q. Now, state whether or not Mr. Terrell has ever offered to give you any information as to where he got that money.

A. No, he didn't give me any information; I found it in his office.

Q. What did you find there, what did you find in his office?

A. I found a book of stubs that contained a stub of this check.

Q. Where did that stub indicate that this money came from?

A. It indicated that it came out of an account in the Austin National Bank in the name of S. H. Terrell, Comptroller, in which tax funds had been deposited.

Q. All right. Was that or not the \$5,400.00 account, or was that the account you called the inactive account?

A. The one I referred to as inactive. The account now has a small balance.

Q. What is the next item you show in your report that Mr. Terrell has not accounted for?

A. October 14, 1925, Magnolia Petroleum Company, \$1,472.80.

Q. And the next item?

A. March 19, 1926, Magnolia Petroleum Company, \$140.40.

Q. And the next item?

A. August 19, 1926, Keeling Oil Company, \$200.00.

Q. And the next?

A. September 30, 1926, Keeling Oil Company, \$100.00.

Q. That totals how much?

A. \$2,689.14.

Q. And those items were deposited in which bank?

A. Texas Bank and Trust Company.

Q. All right. Now, then, take the account in the Austin National Bank.

A. January 26, 1925, Independent Oil Company, \$2,334.84.

Q. Go ahead.

A. January 6, 1926, Magnolia Petroleum Company, \$1,332.60; January 6, 1926, Magnolia Petroleum Company,

\$1,473.34. The same date, Magnolia Petroleum Company, \$631.20; March 20, 1926, Auto Supply Company, \$28.85.

Q. That apparently is a sum of money which has not been explained or discussed before. Can you give us any information as to where that came from?

A. Where the information comes from?

Q. What kind of money is that?

A. We know very little about it. It was probably gasoline or gross receipts tax.

Q. What is the amount of the item?

A. \$28.85.

Q. What is the next amount unaccounted for?

A. January 30, 1926, inheritance tax, estate of M. E. Griffith, \$1,336.00; and penalty for estate M. E. Griffith, \$26.67; January 30, 1926, Magnolia Petroleum Company, \$1,262.40; March 20, 1926, inheritance tax, estate of William O. Allison, \$4,195.86; November 18, 1926, Keeling Oil Company, \$25.00; October 1, 1928, Miller Brothers circus, \$337.50.

Q. That is a new item, \$337.50?

A. Yes, sir.

Q. How did you find and identify that item, Mr. Lynn? Was that through information furnished you by the Comptroller's Department? Did you get it from any of their records, or how did you ascertain that item?

A. We first traced it down through the deposit slips and by correspondence, first with the bank in Gainesville, Texas, and then with the tax collector in Gainesville, Texas. After we had already obtained the information we finally found records in the Comptroller's Department substantiating this.

Q. What kind of record did you find in the Comptroller's office?

A. A report of one of their auditors there, and I believe we found a letter in regard to that, also.

Q. Now, do you recall in what bank account this \$337.50 was deposited?

A. Austin National Bank.

Q. State whether or not the deposit slip indicates the source of that deposit.

A. It is M. Brothers check, by R. A. Mack, Gainesville.

Q. This information you got in the Comptroller's Department, was that volunteered by anybody in the Department, or did you just inquire about certain records where it might be found when you asked for it?

A. After we had already obtained the information, we inquired about it and finally were furnished with audit report and letter.

Q. Any other items?

A. Shall I go ahead on this?

Q. Yes.

A. October 1, 1928, United Investment and Amusement Company, same as Al G. Barnes circus, \$2,458.00.

Q. We have already explained how you found out about that item?

A. Then there is a difference on two items that totals 4 cents.

Q. That is not material.

A. That is not material. December 13, 1929, I. L. Busick, \$90.00.

Q. Can you explain that shortage of \$90.00, that item?

A. \$375.00 was collected from a man named Busick in Amarillo as occupation tax for maintaining electric pianos in various places in the Plains. \$285.00 of that amount has been by Mr. Terrell transmitted to the county tax collectors, leaving an amount of \$90.00 either due back to Busick or due to some tax collectors in some places.

Q. Do you know where that money was deposited, in which one of these banks?

A. Austin National Bank.

Q. Now, what is the total of that?

A. The total of the items deposited in the Austin National Bank, not accounted for, is \$15,532.30.

Q. Do you recall what amount was deposited in the Texas Bank and Trust Company, and which has not been accounted for?

A. \$2,689.14.

Q. Now, what is the total of that?

A. I will add it and find out. I beg pardon, I gave you the wrong figure. The total is \$15,558.62.

Q. That is, the total of the amount of money which was deposited in the Austin National Bank, aggregated a total of \$15,558.62? Now, then, where does the difference come in?

A. A deposit of June 10, 1925, from an entirely unknown source for \$26.32. That is the one item in either of the accounts that we were entirely unable to identify.

Q. Now, what is the total of the deposits in both of those banks of unaccounted-for items?

A. \$18,247.76.

Q. Now, Mr. Lynn, from the examination that you have made, outside of this one \$26.00 item, state whether or not these funds are funds which Mr. Terrell received, either as money belonging to the State, absolutely and without question, or as escrow funds?

A. We found that all of the items except the \$26.32 item were either the property of the State outright or were

items held by Mr. Terrell in escrow due to his official position as Comptroller.

Q. Now, in Charges 10 and 11, upon which this proceeding is based, it is stated that Mr. Terrell applied the different amounts set out in those items, in those charges, to his personal use. Have you the original memoranda upon which those allegations are based?

A. I have the memoranda that he gave to me and Mr. Banning in regard to the items that he did identify. Most of the items were never identified by himself at all.

Q. I believe you testified on yesterday when that happened. When was it he gave you that information?

A. On January 23, 1930.

Q. January 23, 1930. My recollection is that those were withdrawals out of the Austin National Bank and the Texas Bank and Trust Company?

A. Yes, sir.

Q. Do you remember the dates when those withdrawals began, that is, from the time on which they were furnished; was it May 1, as a matter of refreshing your memory, on the Austin National Bank?

A. In the Austin National Bank the first check record which he gave us information on was dated April 25, 1929.

Q. I mean those which were applied to his personal use only?

A. The first one for his personal use was dated May 1, 1929.

Q. Now, did he or not give you any information as to what the checks were used for, or did he just state personal use?

A. We copied from the stub book the information furnished there and then inquired of each item and he would either state personal use or State use.

Q. Did he or not tell you what particular use was made, or did he just say personal use?

A. He would just say personal.

Q. All right, now just read from your records the amounts that he used for himself, for his own personal benefit. Read from any memorandum you have which is most legible that you know is best. If there is no objection, we will state that these items are set out on pages 14, 15 and 16 of the report dated January 27-29. Now, what is the total of those amounts, of the amount of money which was appropriated by Mr. Terrell to his personal use out of that bank?

A. The ones he identified totaled \$3,219.31.

Q. That was the amount which he

identified as having used personally from May 1, 1929, to what date?

A. January 7 or 8, 1930.

Q. Now turn to the Texas Bank and Trust Company.

A. This was shown on page 9 of the report of January 27-29, 1930.

Q. What is the total amount of that money which Mr. Terrell says he used for his personal benefit?

A. The amount he said at that time was personal amounted to \$714.41. Some other items which he said at that time were uncertain and which appeared to have been personal, amount to \$94.10.

Q. State whether or not you have one particular sum exceeding \$500.00 under investigation at the present time?

A. Yes, sir, we are investigating an item.

Q. What is the date and amount of that item?

A. October 24, 1927, \$657.13, drawn from the Austin National Bank.

Q. Do you know at this time to whom that check was issued?

A. Our information is that it was given to a banker in Burleson, Texas.

Q. All right. State whether or not, since the preparation and filing with your report to the Legislature, you have been furnished with a copy of Mr. Terrell's auditor's report?

A. Yes, sir. We have been furnished that.

Q. What is the total amount that Mr. Terrell's auditor's report shows as being unaccounted for by Mr. Terrell to him?

A. I will have to find that report.

Mr. Keeling: Not to make a suggestion, but if you stated it correctly as unaccounted for—just so I will understand fully just what your question is.

Mr. Petsch: I suggest you write it down and I will put it in the record the way it ought to be.

Mr. Keeling: The only point was whether or not Phillips' report showed any funds unaccounted for. It is just the words "unaccounted for."

Mr. Petsch: The fact I wanted to get before the House was this.

Mr. McGregor: I think the question, as stated, was correct. I think Mr. Keeling misunderstood Mr. Petsch's question.

Mr. Petsch: I want to get it in here in a fair way, and I don't want to leave any unfair inference, one that is not justified.

Q. What is the total amount that Mr. Terrell's auditor's report shows as being unaccounted for to Mr. Terrell's

auditor? The total amount is what we want now.

A. As far as deposits are concerned—

Q. I want now you to state the total amount Mr. Terrell's auditor's report shows as unaccounted for to the auditor?

A. \$12,289.19.

Q. \$12,289.19?

A. Yes, sir.

Q. Now, then, how do you reconcile that difference between Mr. Terrell's auditor's report and your report showing the total amount unaccounted for to the amount of \$18,247.76?

A. Well, the principal difference is that Mr. Phillips has construed as being unaccounted for, items that he deposited on January 27, 1930. Those were: Keeling Oil Company, \$200.00; Keeling Oil Company, \$100.00; Estate of M. E. Griffith, \$1,362.67; Estate of William O. Allison, \$4,195.86; Keeling Oil Company, \$25.00. He did not take into consideration the difference of four cents, and he did not take into consideration the \$90.00 due I. L. Busick.

Q. Now have you had Mr. Phillips' report? Mr. Phillips is Mr. Terrell's auditor?

A. Yes, sir.

Q. If you add those items to the amount admitted as being unaccounted for in Phillips' report, state whether or not the two bank accounts are virtually identical?

A. In respect to the two bank accounts we are discussing, the result is the same after that is added on.

Q. (By Mr. Purl): Exactly?

A. To a dot.

Q. (By Mr. Petsch): They check exactly; is that correct?

A. After those things are taken into consideration, there is no difference at all. It is exactly the same.

Q. From the investigation you have made, what amount do you say that was deposited in the Austin National Bank by Mr. Terrell of State funds has been misappropriated by him; will you turn and give us that amount? I believe you will find that listed in charges 14 and 15.

A. The amount misappropriated altogether was \$18,247.76.

Q. Now, give us the amount in the Austin National Bank separately.

A. Austin National Bank, \$15,558.62.

Q. Now, in the Texas Bank and Trust Company?

A. \$2,689.14.

Q. Now, Mr. Lynn, state whether or not Mr. Terrell has failed and refused to account for those items to you?

A. Yes, sir; he has both failed and refused to account for them.

Q. Now, since the time you wrote your Auditor's report, state whether or not you discovered any other misappropriations besides those listed in the report and which you say amount to \$18,247.76 by way of illegal withdrawals from the Treasury?

A. We also learned of some deposits in the American National Bank in the name of S. H. Terrell, Special.

Q. Now, so as to clarify the matter before the House, how many bank accounts did Mr. Terrell have in the American National Bank which you know of? That matter was covered yesterday, but I want to review it.

A. He had an account in the name of S. H. Terrell, Comptroller, and an account in the American National Bank in the name of S. H. Terrell, Special.

Q. Now, did you at any time examine the account of S. H. Terrell, Special, and if so, did you make that examination before you wrote your last report, or since that time?

A. The examination was made shortly after that report was written, and we stated in our report that we had not had much information about it at that time.

Q. Now, did you have any conversation with Mr. Terrell concerning that account, in which he gave you any information as to whether that was a public fund account or a private fund account?

A. He told me at that time it was strictly a private account.

Q. Did he or not ever give you a list of checks drawn on that account?

A. He did not give that to me. He gave that to Mr. Carter and Mr. Banning.

Q. Was that turned over to you, subsequently turned over to you?

A. Yes, sir; I have a copy of that now.

Q. I don't want you to state the conversation, but just answer the question yes or no. State whether or not, at that time, he gave you any information concerning the character of deposits that had been made in that account.

A. That was not given to me.

Q. Well, you don't know about that?

A. No.

Q. Now, then, state whether or not you discovered that any State funds, or money belonging to the State, apparently had been deposited in that account.

A. Yes, sir; we have ascertained that.

Q. What have you ascertained?

A. Well, let me get the information.

Q. August 13, 1926, apparently is the date.

A. On August 13, 1928, there was a deposit in the American National Bank in the name of S. H. Terrell, Special, Warrant No. 82080.

Q. What kind of a warrant was that?

A. It was drawn for postage, a State warrant drawn for postage.

Q. Drawn on the State Treasury?

A. Drawn on the State Treasury.

Q. Have you examined that warrant, the original warrant?

A. No, I have not seen the original.

Q. You have photostatic copies of it here, have you?

A. Yes, sir.

Q. Mr. Lynn, coming back to the American National Bank account—that is, the S. H. Terrell, Special—

A. Yes, sir.

Q. And the account which Mr. Terrell admitted where he drew big checks for personal use on, is that correct?

A. Not quite altogether. He drew for State purposes, the very last checks were drawn for State purposes.

Q. The last checks for State purposes? How much was that?

A. About \$155.02.

Q. How much was it?

A. \$155.02.

Q. Outside of the \$155.02, Mr. Terrell admitted to you that the other checks drawn on that account were for personal use, is that correct?

A. He didn't admit it to me, but the accounts prepared by the other men showed they were for personal use.

Q. Which of the men can testify to that?

A. Mr. Banning and Mr. Carter can, each.

Q. Now, you testified to two \$600.00 items a while ago deposited in that account. Now, state whether or not your record shows if any other funds were deposited which indicated they were State funds.

A. The first deposit to the account, on July 18, 1928, was \$500.00, and that was transferred from the Austin National Bank. That amount, of course, is already included in, has been charged to Mr. Terrell, in the amount already stated.

Q. Yes, sir.

A. And then, on January 8, 1930, there was a deposit of \$563.38 that was made in the Austin National Bank to S. H. Terrell, Comptroller, Special.

Q. That also has been charged to Mr. Terrell in this total of \$18,247.76, hasn't it?

A. All except the amount he used

for State purposes, \$155.02; that has been transferred to this account.

Q. Well, he has been given credit for that?

A. It has all been taken care of; no additional charge against him in addition to that.

Q. Yes, sir. Now, let's go back to these \$600.00 items, these postage items. Mr. Lynn, are you acquainted with the appropriation bill as to appropriations made for postage for the departments, and especially for the Comptroller's Department?

A. Yes, sir.

Q. To this extent, do you know whether or not that money that was appropriated for each year, if it is unexpended at the end of that time, at the end of the year, remains as funds available for use or for deposit, or whether they go into the State Treasury?

A. Oh, if at least a contract has not been made for spending the appropriation by the end of the fiscal year, it lapses and remains in the State Treasury.

Q. Remains in the State Treasury?

A. Yes, sir.

Q. What is the end of the fiscal year?

A. August 31 of each year.

Q. August 31 of each year. Now, what is there to show and what record do you have at this time?

A. Photostatic copy of warrant on the State Treasury. Shall I describe it?

Q. Yes, sir; go ahead.

A. No. 82080, Treasury warrant drawn in favor of S. H. Terrell for \$600.00, account postage.

Q. What is the date?

A. August 8, 1928.

Q. Now, read the endorsement, please.

A. For deposit, S. H. Terrell.

Q. Where was that deposited?

A. It was deposited in the American National Bank.

Q. In which one of the accounts, the State fund account there, or the private account?

A. Private account.

The warrant was offered and received in evidence, marked "Exhibit 15," and is in words and figures as follows:

"General Revenue No. 82080
State Comptroller of Public Accounts.
Treasury Warrant

Austin, Texas, August 8, 1928.

The Treasurer of the State of Texas will pay to the order of S. H.

Terrell \$600.00
Six hundred and no/100 Dollars.

Out of any money appropriated by an

act of the Texas Legislature in the year A. D. 1927.

Appropriation No. k-272 C Account of Postage being for Comp.

(Compared. Registered.)

W. GREGORY HATCHER,

State Treasurer.

S. H. TERRELL,

State Comptroller of Public Accounts."

Endorsed: "For Deposit, S. H. Terrell. Paid, Austin Clearing House, August 14, 1928. American National Bank."

Q. Now, what is that instrument that you are examining at the present time, Mr. Lynn (referred to instrument handed to witness)?

A. That is a pay warrant, drawn by the State Comptroller on the State Treasury, No. 78914, dated July 6, 1929. I beg your pardon, it is not the warrant itself, it is a photostatic copy of it, in favor of S. H. Terrell for \$600.00, to be paid out of appropriation L 679 r, account postage.

Q. Please read the endorsement.

A. For deposit, S. H. Terrell. And then the bank's endorsement.

Q. Where was that check deposited, and in what account?

A. Deposited in the American National Bank, in the name of S. H. Terrell, Special.

Q. Where are the originals of these two checks—I mean of these two warrants?

A. They are with the Treasurer.

The warrant above identified by the witness was received in evidence and marked "Exhibit 16," and is as follows:

"General Revenue No. 78914
State Comptroller of Public Accounts
Austin, Texas, July 6, 1929.

Treasury Warrant.

The Treasurer of the State of Texas will pay to the order of S. H.

Terrell \$600.00
Six hundred and no/100 Dollars.

Out of any money appropriated by an act of the Texas State Legislature in the year A. D. 1927.

Appropriation No. L 679 r.

Account of postage. Being for Comptroller.

(Compared. Registered.)

W. GREGORY HATCHER,

State Treasurer.

S. H. TERRELL,

State Comptroller of Public Accounts."

Endorsed: "For deposit, S. H. Terrell. Paid. Austin Clearing House. Jul. 15, 1929. American National Bank. Also Paid Austin Clearing House, Jul. 16, 1929. American National Bank."

Q. State whether or not this \$1,200.00 was included in your total of \$18,247.76?

A. No, sir, that wasn't included.

Q. Now, you were questioned a while ago pertaining to one item dated October 24, 1927. In the event your investigation discloses that money was appropriated to personal or private use, state whether or not that should also be added together with these \$1,200.00, to your total of \$18,247.76, as money appropriated to be used on account of postage?

A. You refer to the item of October 24, 1927, \$657.13?

Q. Yes, sir.

A. That should not be added; that is already included.

Q. That is already included?

A. We are merely trying to identify it.

Q. Merely trying to identify it?

A. To find what the money was paid out for.

Mr. Petsch: We would like to have just a few minutes for conference with the other attorneys for the State.

(After retiring for consultation, Mr. Petsch returned and turned the witness over for cross examination.)

Cross Examination.

Questions by Mr. McGregor:

Q. Mr. Lynn, when did you qualify as a certified accountant?

A. 1923.

Q. When did you qualify as State Auditor?

A. 1929.

Q. When did you first communicate to the Comptroller that you wanted to examine his department?

A Member: I can't hear you!

Q. When did you qualify as State Auditor?

A. September 18, 1929.

Q. When did you first notify the Comptroller that you wanted to examine his department?

A. I never did formally notify him of any such intention. I just began making an investigation, and introduced myself to him as I went around there, and told him I wanted information from time to time.

Q. When did that occur?

A. I couldn't give you the exact

date; it was soon after I came into office.

Q. Who is associated with you in this investigation?

A. Mr. W. F. Carter, Jr.—

Q. Wait a minute. Where is Mr. Carter from?

A. Dallas.

Q. Who else is associated with you?

A. Mr. Charles N. McClendon, of George Armistead & Company, Houston.

Q. That is a firm of accountants?

A. Yes, sir.

Q. Is Mr. McClendon a certified public accountant?

A. No, sir, he is not a certified public accountant?

Q. Who else is associated with you?

A. Mr. Paul D. Banning.

Q. Where is he from?

A. Washington, D. C.

Q. Is anyone else associated with you in this investigation.

A. That is all.

Q. Now, the department once was audited, I believe you testified, in 1910?

A. There was an audit made in 1909, including the Comptroller, the Treasurer and the Land Office.

Q. And thereafter, in 1910, a statute was enacted carrying into the law the recommendations of the audit made at that time?

A. The statute was passed in 1910, a law on these lines.

Q. Yes, sir. Now, you are familiar with all the laws governing that department?

A. I have read them and studied them; I cannot quote them to you by any means.

Q. Has there or not been considerable progress made in the science of accounting and applied machines since that statute was passed?

A. There has been.

Q. Is that statute adequate to meet the progress that has been made in the science of accounting?

A. The statute, I believe, is substantially adequate, because it doesn't go into too much detail, based on the scientific principles of accounting, and they don't change and will never change.

Q. Isn't it a fact that many machines—adding machines, accounting machines, and other machines have been developed since the passage of that statute?

A. Yes, sir.

Q. Is there anything in that statute that provides for the installation of any of these machines?

A. Nothing that provides for it;

and nothing that will prevent the use of them.

Q. Now, then, you state that the statute requires that the Secretary of State should approve the accounts of the Comptroller's Department before they are paid?

A. Yes, sir.

Q. Is that approval a condition precedent to the payment of an account?

A. I will have to leave that to the Attorney General to pass on that. The law specifies it shall not be passed to the Treasurer before it is approved by the Secretary of State. I do not interpret the law.

Q. You do know that it requires approval by the Secretary of State?

A. The law states that it shall be so approved.

Q. And goes from there to the Treasurer's Department?

A. Yes, sir.

Q. Then, you are not willing to state that the approval is a condition precedent to the payment of the warrant?

A. I am not going to pass on any legal questions.

Q. Yes. Now, you spoke of the Texas Tax Record Corporation. Have you seen the charter of that organization?

A. I have seen a certified copy of the charter.

Q. It is of record in the Secretary of State's office?

A. Yes, sir.

Q. Filed there?

A. Yes, sir.

Q. You got the information that gave the lead in this investigation from that department?

A. Yes, sir.

Q. Now, this check that was payable to the Texas Tax Record Corporation was payable to Mr. Bagby, wasn't it?

A. The check was made payable to A. P. Bagby, President of the Texas Tax Record Company.

Q. The check was then endorsed to Mrs. Terrell, wasn't it?

A. I don't call it exactly an endorsement; it bears her endorsement and bears Mr. Terrell's endorsement.

Q. And was then transferred to Mr. Terrell. Now, did you find in your records any evidences of account, money collected or otherwise, that showed any connection on the part of Mr. Terrell with the Texas Tax Record, except what you have testified to?

A. My auditors' examinations here show that he turned money into them

at times, and then in turn they turned this money over to him.

Q. Now, did it show that he turned it over to the corporation or to Mr. Bagby?

A. A. P. Bagby, President of the Texas Tax Record Company.

Q. Is there any instrument in here showing Mr. Terrell paid Mr. Bagby any money, or gave him any, any instrument at all showing that Mr. Terrell gave it to him?

A. That Mr. Terrell gave Mr. Bagby the money?

Q. Yes, sir.

A. I will have to consult the notes on that; I will have to search through for the items. There are several of them, I believe.

Q. Well, while he is looking for that, in order to save time we will go ahead on another matter. Now, Mr. Lynn, there was deposited in the Texas Bank and Trust Company \$775.94, representing a transfer from the Austin National Bank, I believe you testified?

A. Yes, sir.

Q. Now, then, there was deposited in that account \$1,472.80, designated by that instrument and by you as escrow money belonging to the Magnolia Petroleum Company?

A. Escrow money deposited by them, the ownership to be determined later.

Q. You just answer my questions, please. You also testified that there was \$140.40 deposited in that account as an escrow deposit by the Magnolia Petroleum Company?

A. \$140.40.

Q. Yes, sir?

A. Deposit made by the Magnolia Petroleum Company.

Q. Yes, sir?

A. To the Comptroller.

Q. Yes, sir, there was deposited in that account—Sunshine Oil Company—\$6,609.28, that was Sunshine Oil Company deposit, wasn't it?

A. Sunshine Consolidated Oil Company.

Q. Yes, sir. And two items of respectively \$200.00 and \$100.00 belonging to the Keeling Oil Company?

A. I didn't use the expression "belonging to the Keeling Oil Company." You can put it that way if you wish, but I don't answer it that way.

Q. You think it was an escrow item?

A. That is in the escrow account.

Q. Now, that is in the escrow account? Now, that made a total in that account of \$9,298.42, didn't it?

A. That is my recollection, yes, sir.

Q. Now, the escrow account was, be-

longing to the Magnolia Petroleum Company, \$1,613.20, wasn't it?

A. I will have to look at the figures exactly.

Q. Well, it was \$1,472.80 and \$140.40, that would be \$1,613.20, wouldn't it?

A. Yes, sir.

Q. Now, giving all that money to the State, except this \$1,613.20, subtract that \$1,613.20 from \$9,298.42, how much have you got left?

A. I had better have a pad if I am going to make calculations here at this time (figuring). Total amount deposited, and you say subtract what, now?

Q. \$1,613.20 from the total amount above?

A. \$8,685.22.

Q. Wouldn't it be \$7,685.22?

A. I beg your pardon,—\$7,685.22.

Q. How much would it be?

A. \$7,685.22.

Q. Now, you treat this \$1,613.20, the Comptroller's Department treated it, and this committee has treated it as an escrow item, haven't they?

A. I don't know how anybody treated it. I just told you it was money that was deposited in escrow in this account.

Q. Now, you have got an opinion, now, whether that money belongs to the Magnolia Petroleum Company or to the State, haven't you?

A. You are calling on me to express an opinion as to whom that money belongs to at this time?

Q. Well, if you have any opinion about it, we would like to have it.

A. The Magnolia Petroleum Company claims it belongs to them.

Q. You haven't any objection to developing the facts in this case, have you, Mr. Lynn?

A. I have no objection whatever.

Q. And the record shows that \$1613.20 was put in there awaiting the ruling of the Supreme Court?

A. Yes, sir.

Q. Then I suppose there is no question about it being escrow funds?

A. No, sir.

Q. Now; that leaves a balance of \$855 which embraces the Keeling fund, doesn't it?

A. Yes, sir.

Q. Now, your account says it was that money that went into the State for \$8489.91, under your audit, why, you got \$8489.91?

A. Yes, sir, \$8489.91.

Q. Now, you have your pad there,

write that \$8489.91 down. Now, take from that sum \$7685.22.

A. (Figuring.)

Q. And what balance have you got?

A. \$804.69.

Q. Now, then, the State got out of that account \$804.69 more than she was entitled to, didn't she?

A. The State didn't get anything out of that account that it is not entitled to.

Q. Just answer this question, as reflected by the record, the State got \$804.69 more than it was entitled to?

A. The State got nothing from the account except what it was entitled to.

Q. The State got more than it was entitled to, and took out \$804.69 more than it put in, didn't it; that is the record of the account—you didn't make it and I didn't make it, but that is what it reflected, didn't it?

A. Yes.

Q. Now, then, Mr. Lynn, accuracy is the essence of accounting, isn't it?

A. It is very important.

Q. Very important? It is also of reasonable value to any man?

A. Yes, sir.

Q. Now, on January 2nd, on page 9 of your report, you state that Mr. Terrell gave a check on this account for \$129.98,—that is in your report there, isn't it?

A. Yes, sir.

Q. Now, you state that this check was for a cashier's check, that is your report, isn't it—you furnished us with it?

A. It says here cashier's check.

Q. Cashier's check? Now, if an item submitted to you as an auditor does not reflect the full state of facts, but it does furnish an index where you can obtain the full state of facts, it is your duty as an auditor to go and obtain that, isn't it.—you are getting the facts?

A. Yes, sir. I knew the money was placed there, we can't find them all in a limited time, if that is what you mean.

Q. An index by which things can be learned is therefore relatively as valuable as things separately found themselves?

A. If you are only getting at the facts and haven't developed all the information that could be developed about these matters, that is true.

Q. Well, now, just pardon me—I don't want to entangle you, I think you have entangled yourself enough. Did you go down and ask for the cashier's check?

A. I didn't go. I sent some one, made several inquiries about it.

Q. Did they go before you made this report?

A. They did not.
Q. They went after you made the report?

A. That is true.

Q. Why didn't they go before you made the report? You are making this charge against the Comptroller?

A. I had a number of things to do, and there were some things I did do and some things I didn't do.

Q. So you just took a shot at it as being a cashier's check?

A. No, sir, I took what Mr. Terrell gave.

Q. And you haven't followed it up, have you, since you investigated that?

A. We have.

Q. Now, instead of being a cashier's check, this is a number of cashier's checks, isn't it?

A. Several cashier's checks.

Q. And it shows a reimbursement?

A. Just read what it says about it.

Q. Never mind, just answer my question, you will get along all right. The record shows that it is several cashier's checks, doesn't it?

A. There were several cashier's checks.

Q. And they embraced and embodied several, to the amount of \$129.98, isn't that true?

A. That is right.

Q. And they are payable to or endorsed to various tax collectors throughout the State, accounting for that money absolutely, aren't they?

A. That is right.

Q. All right. Now, you spoke—on page 10 of your audit there was this language: "It will be noted that certain of the payments have been made to persons believed to have been employees in the Comptroller's Department, and that there is an apparent proportional uniformity in some of the payments." Now, you mean by that, stripping it of euphonious language or technicality, there had been a divvy among those employees, is that what you mean?

A. No, I don't mean that. I just mean to call attention to the fact to examine further.

Q. I will state this, you did mean to cast suspicion on those items?

A. I meant to call attention that they should be examined further.

Q. In other words, they challenged your attention for examination?

A. Yes, sir, that is true.

Q. Did you make an examination, or inquire, or state that you would make an examination before you made this report?

A. No, we went into it no further than that.

Q. Now, you were furnished with a copy of Mr. Phillips' audit Monday afternoon, weren't you?

A. Yes, sir.

Q. And it was after you got his audit that you began inquiring?

A. No, sir, I inquired about that before I got his audit.

Q. Did you make an investigation?

A. I inquired of one man, Burke, what that was for.

Q. And you didn't get the information?

A. No, sir, I didn't get all—

Q. What did he tell you?

A. He said it was expense money.

Q. He told you that before you made this report?

A. No, sir.

Q. He told you that after you made this report?

A. Yes, sir.

Q. Now, Mr. Lynn, these four items are all payable to—April 4, Tom Folts, \$15.85; A. P. Bagby, Jr., \$15.80; J. W. Burke, \$30.72; E. F., \$30.17; E. E. Upshaw, \$11.85, and all those people are now employees in the Comptroller's Department except Mr. Bagby, aren't they?

A. I don't know about Mr. Upshaw.

Q. And you contented yourself, as a predicate to this charge of impeachment, by asking one employe what that was for and he told you it was for expense account?

A. Terrell told me what those things were for, and that is what I found it for—Mr. Terrell told me what it was for—personal use.

Q. He told you it was for expenses?

A. Personal use, he said.

Q. And you charged them to his personal account and stopped there?

A. I believed there what he told me.

Q. You didn't believe him, did you, or you wouldn't have made that innuendo in this statement?

A. I didn't state there or tell him that I disbelieved him.

Q. But you did so phrase these charges as to call for an additional investigation?

A. That is right.

Q. Yes, sir. Now, then, have you since seen this statement of expense accounts in the Comptroller's office?

A. No, sir.

Q. Do you know whether they are there?

A. No, sir. I took Mr. Terrell's word on that. Evidently he believed it.

Q. You believe what he said about it?

A. Yes, sir.

Q. Do you know that in those expense accounts, on each of them, was shown a separate item, every charge?

A. Mr. Phillips reported so.

Q. And that those warrants are now canceled and deposited in the Treasurer's Office of this State?

A. Mr. Phillips reported so.

Q. Have you gone there to verify it?

A. I haven't gone there to verify it, no.

Q. You have never verified the expense account in the Comptroller's office or cancelled warrants in the Treasurer's office?

A. I have not.

Q. Do you know how they are endorsed?

A. Mr. Phillips' report says they are endorsed by E. J. Martin.

Q. Endorsed as payee by E. J. Martin? Mr. Terrell was never connected at all with them in this report?

A. No, sir.

Q. And yet you charge him with these items?

A. I am telling what he told me.

Q. Now, going back to the language, you use this expression: "No personal funds were deposited in this account, but, according to the Comptroller's own admissions—" What is the difference between the meaning "admission" and the word "statement"?

A. I don't know. I will let you answer that question.

Q. You don't know?

A. Admission, I take it, is where a man thinks he is being pressed to explain as to what these were for. He admitted it was for that.

Q. The difference between an admission and a statement—you know the difference, don't you, Mr. Lynn, between an admission and a statement?

A. Well, an admission is a statement, Mr. McGregor.

Q. I understand—

A. An admission is a statement.

Q. But you took it here as carrying the significance that it involved a delinquency or was incriminating in its nature, didn't you?

A. No, it doesn't mean that. It means that he was rather pressed for the information, and he admitted that to be the case. You take it your way; it is all right that way.

Q. Do you think it fitted that way, as an admission?

A. A man says he admits doing some-

thing he shouldn't have done, and that would apply, I judge, in this case.

Q. Now, there was no money checked out of this account—this Texas Bank and Trust Company account—from February 5, 1929, until January 2, 1930, was there?

A. January 7, 1930.

Q. January 7, 1930? You have got the wrong account.

A. No, Texas Bank and Trust Company. January 7, 1930.

Q. No, what was that check of January 7?

A. \$129.98.

Q. I will ask you to examine the report that you gave Mr. Terrell and his counsel and see if you do not say that was checked out January 2, 1930.

A. Remember, this information comes from the check stubs, and this comes from the bank's statement.

Q. Then you preferred these charges on the check stubs instead of going to the bank and getting the best evidence?

A. That is all right.

Q. Now, there were no funds checked out from that account from February 5, 1929—

A. February 8, 1929.

Q. Well, February 8. The bank record would show the date of payment, wouldn't it, and not the date of the check?

A. Yes, sir.

Q. So this would be correct as to the date of the instrument wouldn't it?

A. Yes, I am sure it is.

Q. Now, when did you learn what date Mr. Terrell took over this account from Mr. Martin? He furnished you that information, didn't he?

A. No.

Q. He gave you the check stubs from which he had written the checks on himself—checks on these bank accounts?

A. I didn't ask him whether he wrote these checks. He wrote others also; he gave me the receipts.

Q. Now, don't you know Mr. Terrell didn't write but one check on that account after he took charge?

A. I know I don't know when he took charge.

Q. Didn't your records show he took charge of that account on the 25th of April, 1929?

A. That is not my information. That is where the stubs begin that he showed me.

Q. That is where the stubs begin that he showed you?

A. He told me they had been destroyed prior to that time.

Q. All right; he told you they had been destroyed prior to that time?

A. Yes, sir.

Q. You found the stubs that he had after he had possession of the account, did you?

A. I don't know when he took possession of the account. He may have had it all the time for all I know.

Q. Now, Mr. Lynn, you have expressed modestly a familiarity with the law regulating the Comptroller and have discussed considerable matters of escrow. I will ask you if you know any statute in this State that authorizes, empowers or permits a public officer to hold money in escrow for the State?

A. I know of none that authorizes the Comptroller to. There are certain departments that are authorized to hold certain deposits in escrow.

Q. You know of none that would authorize the Comptroller to hold money in escrow?

A. I know that there have been such cases where the money has been held in escrow by the Comptroller by court order.

Q. I didn't ask you that. I asked you if you knew any statute or authority whereby the Comptroller was authorized or permitted to hold money in escrow?

A. I don't know of any such statute.

Q. You haven't seen it?

A. No, sir.

Q. Now, then, returning to your audit of the Austin National Bank, to the last checks of the Austin National Bank—

A. You mean the full list or partial list?

Q. Yes. Now, then, when you made this report, you made two of them, didn't you?

A. Yes, sir.

Q. One on the 27th and another on the 29th?

A. That is right.

Q. Now, you conclude your report of the 29th with this language—

A. Page 17?

Q. On page 16 you use this language: "Such information as has been furnished in regard to the withdrawals from the account in the Austin National Bank is wholly insufficient to relieve the Comptroller of the liability for the amount of \$54,364.55 chargeable to him in respect of deposits made in the account?"

A. Yes, sir.

Q. And now, this morning, you say that taking the two accounts together

and including the Wilson item, \$4185.86—

A. The Allison item, you mean.

Q. Now, then, wait a minute. The Allison item of \$4195.00 and the Griffith item of \$1336.00 plus, that there is a deficiency only in the sum of \$18,000.00—is that right?

A. Yes, sir. We have obtained considerable information from—

Q. I am not asking you the source of your information, I am just asking for your testimony. You also state that in crediting these items, that your report then coincides with Mr. Phillips' report, and that there is only a deficiency, of all the sums received, of a matter of \$12,000.00?

A. No, sir, I don't admit that.

Q. Didn't you swear to that here, you and Phillips agreed to a penny?

A. I stated that certain reconciliations agreed to a penny.

Q. And didn't these reconciliations include the Allison item before discussed, and the Keeling item, and others, isn't that what you put into that reconciliation when you were examined here in this?

A. Mr. Phillips' report gives Mr. Terrell full credit for the amount he turned in on January 7, 1927. We maintain that when he closed these accounts on January 7th—

Q. Now, wait a minute. You listen to my question, I am not going to be interfered with. You swore that crediting the Keeling item, the Griffith item and the Allison item on your account would bring your account to coincide with the Phillips' account, didn't you?

A. Except for \$90.00.

Q. Except for \$90.00? Well, you can keep that. So, then, instead of Mr. Terrell being liable for all this money received, you and Mr. Phillips both account for the proposition that if there is any liability it would only be the \$12,000.00, wouldn't it?

A. My report isn't from the standpoint—

Q. I am not asking from what your report is. How much is it, now, how much is the liability now?

A. The present liability, giving him credit, if there should be any on the 27th, he is still liable for \$12,000.00.

Q. \$12,000.00? All right. Get your pencil and pad. How much escrow money was received, all told? Take the \$1,472.00—the total escrow money?

A. It would be unable to determine whether some of these items are escrow items or not.

Q. Did you ever make a statement here of the escrow items?

A. Tell me what you refer to—I don't know what you mean. We have an escrow account. What is it you refer to?

Q. How much money was put in escrow,—you have got it all?

A. It is possible that—

Q. Let's take a pencil and itemize it. You put in \$2,334.84, Independent Oil Company, didn't you,—that is an escrow item?

A. That is right.

Q. That is page 11 of your report; \$1,332.60, Magnolia Petroleum Company, is that right?

A. \$1,372.60, yes, sir.

Q. \$1,473.34, Magnolia Petroleum Company?

A. That is right.

Q. \$631.20, Magnolia Petroleum Company?

A. Yes.

Q. \$1,262.40, Magnolia Petroleum Company. The next two items, now, add these two items together and let's see what you have got?

A. You mean all of this page?

Q. No, just exactly what I have read.

A. The ones you have read?

Q. Yes, sir.

A. It amounts to (figuring) \$7,034.38.

Q. Now, are there any other escrow items except those accounted for?

A. In this account that you refer to?

Q. Yes, sir.

A. You mean put in there?

Q. In any account—in any account, have you got any evidence of his receiving any other money except that amount—how much have you got there?

A. \$7,034.38.

Q. Now, is there any other money designated as escrow money that he received except the Keeling money that you have turned in?

A. You mean in this particular account, or do you mean in all accounts?

Q. In any of them?

A. I have a complete list of everything deposited in the Austin National Bank.

Q. As escrow?

A. I have a complete list of everything deposited.

Q. Well, we will come back to that. Now, just put that down, then, and let us go ahead, because I want to examine you about these things; I will come back to it. You stated in your original examination that you called on the department for the file in the Allison case?

A. That is right.

Q. You did not call on them, you say, for the file in the Griffith case?

A. I did not.

Q. Mr. McKay brought the file in the Allison case and presented it to you?

A. He did.

Q. He also told you he had found the Griffith file, which you hadn't called for?

A. He told me that at a later day.

Q. Well, he told you, you got the information from him?

A. Yes, sir.

Q. You got the admission that he had it?

A. Yes, sir.

Q. That involves thirteen hundred some dollars, is that right?

A. \$1,336.00.

Q. Now, when you made that report, this second report, did you have that before you?

A. Have what before me?

Q. These two items, did you have information about these two items, that information?

A. Yes, sir.

Q. That the money at that time had been paid into the Treasury for those two items?

A. Paid in on January 27th, the date on which we gave our report.

Q. Yes. And you had that information?

A. That it was paid in?

Q. Yes, sir.

A. When we turned in this report of January 27th?

Q. Yes, sir. Can't you answer any of these facts without looking at the record? Did you have the information about this Allison account when you filed that report?

A. You changed the question—when I filed the report.

Q. Yes, sir; you can answer this one without going to the record?

A. You mean when I filed this report?

Q. Yes, your report of January 29th.

Mr. McGill: Mr. Chairman, I am going to object to the attorney's stating to the witness the manner in which he shall answer his question. He has the right to answer his question as he wants to, and I object to counsel's stating how he shall answer it.

Mr. McGregor: I am not abridging his right; I am asking him as a question of memory, that is all.

A. If you will make your question clear, I will answer it.

Mr. Petsch: More especially, another

thing that I think is objectionable in examination, and that is the fact that the attorney asks one question and before the witness is through answering it he asks a second question. That has occurred just now; the witness was preparing to answer his question and getting ready to answer, and the attorney asked a second question. Of course, that confuses the witness, and especially so when he is testifying from records.

Judge Sinks: You had better let the witness answer before you ask another question.

Mr. McGregor: I will try not to do that, your honor; I will conform to the rule.

Q. Now, will you state whether or not you had the information—

A. What information?

Q. Well, I am going to state, if you will just wait. That the Allison claim and the Griffith claim had been submitted to you before you made that report on the 29th?

A. If they had been submitted to me from Mr. McKay?

Q. Yes, sir.

A. Yes, sir.

Q. You had it?

A. Yes, sir.

Q. Now, then, I will ask you if Mr. McKay did not submit to you at the same time the record in his office showing that in the matter of T. B. Allison, a non-resident of the State, the \$957.00 received on the 3rd day of April, 1925, had been refunded to the Allison people on the 10th of June, 1925?

A. Isn't the name wrong on that? That is not Allison.

Q. Allen?

A. We examined the record, I recall, of that account at that time, and satisfied ourselves it had been refunded.

Q. Had been refunded? Isn't that true also about the H. W. Meisner account, the sum of \$4043.96 received the 10th day of June, 1925, and refunded the 13th day of March, 1926?

A. I take it you are correct about the dates there. I am sure that we examined that item and satisfied ourselves on it at that time.

Q. All right. Did you examine the item of Charles E. Herman estate, non-resident, \$3939.43, received the 16th day of June, 1925, \$3909.04, deposited in the Treasury under warrant 4282, and \$30.39 refunded to the owner July 22, 1925?

A. I think we examined that on that same day.

Q. Do you know whether you ex-

amined the D. W. Beaty estate, non-resident, involving the sum of \$6392.42 received in the department the 29th day of December, 1925, and deposited in the Treasury under warrant 1628 on the 30th day of December, 1925?

A. I am not just exactly sure about those things, but it is a fact we examined several items at that time and satisfied ourselves.

Q. And cleared them?

A. And cleared them, yes, sir.

Q. Now, that sum involved \$15,332.81?

A. I don't know how much it involved. I take it your addition is right.

Q. Well, if they are added, it involved that much money?

A. That is right.

Q. It was cleared out of the Austin National Bank, wasn't it?

A. I am quite sure—

Q. And it was cleared out of the \$54,000.00 that was deposited in the Austin National Bank, wasn't it—couldn't have been cleared out of anything else?

A. We saw the records in Mr. McKay's department; we couldn't trace them to the Treasury Department at that time.

Q. Have you got any doubt about their being paid? If you have—

A. We traced some of those things to the Treasurer, and are still working on it now.

Q. Now, listen, Mr. Lynn, you sat there, you saw what I was doing, what do you mean by that? Now, you saw it coming and you dodged it, didn't you?

A. No.

Q. Well, then, answer this question: Didn't that \$15,332.81 come out of that \$54,000.00 account?

A. As well as I recall, it came out of the \$54,000.00.

Q. Yes. Now, why, when you filed that report here, why was it you didn't credit that \$54,000.00 with these items?

A. Because we had asked Mr. Terrell to furnish us information about those items and he had not furnished it, and we hadn't traced the thing all the way down to the Treasurer. We have specifically asked him to furnish us information about those things, and he has not done it.

Q. You stated here a while ago, before you saw where I was going, that you had this information, didn't you, before you filed this account?

A. We had seen it, yes, sir.

Q. Yes. And yet you charge in your

report that Mr. Terrell was short this \$15,000.00?

A. No, I didn't.

Q. Your employes have?

A. I didn't.

Q. Your employes have?

A. I said the information he had furnished wasn't sufficient to relieve him of liability.

Q. He had furnished you information sufficient to relieve him of \$15,000.00 liability?

A. No, he has not.

Q. You have relieved him since then?

A. I don't know whether the men examining the records in the Treasury Department will or not; they are working today.

Q. But you have learned since and relieved him of \$15,000.00?

A. As far as relieving him, that is based on filing the audit which we hope to make later; any relieving generally is conditional on your part.

Q. Then you are trying—

A. The information as shown here as to the charge to him at this time could be definitely provided, and we want other facts.

Q. Well, now, if you haven't traced these items since they were given you, why didn't you trace them?

A. Into the Treasury, you mean?

Q. Yes, sir.

A. As I stated, we are working on these things today, we are doing things as we get to them; we are working today.

Q. Now, today is the 19th—or 20th. You filed your report on the 29th of January. You have had more than twenty days to trace these items into the Treasury, haven't you?

A. We have a number of other things besides that.

Q. Anything more important than this?

A. I am quite sure we have.

Q. More important than \$15,332.00? Now, Mr. Lynn, did you make a complete audit of that inheritance tax desk?

A. No, sir.

Q. Do you know how many non-resident estates that that desk has distributed in the last five years?

A. No, sir; I don't.

Q. Do you know how many resident estates that that desk has distributed in the last five years?

A. No, sir.

Q. Do you know how many thousands of dollars of money have passed through that desk since he has been in?

A. No, sir.

Q. If you haven't audited that desk—and you say you haven't—how can you justify your reaching an agreement with Mr. Phillips who has audited it?

A. I couldn't reach an agreement with Mr. Phillips. Mr. Phillips states in his report that he didn't audit that department. Read his report and see what he says about it. He didn't audit the inheritance tax division, neither did I.

Q. Well, you make no claim to have audited it at all?

A. I have audited certain transactions of that department.

Q. And cleared them?

A. I have audited some and cleared them, and some I have not cleared.

The Chairman: Gentlemen, the Committee of the Whole will stand at ease until 1:30.

THIRD DAY.

(Saturday, February 22, 1930.)

The House met at 9:30 o'clock a. m., pursuant to adjournment, and was called to order by Speaker Barron.

The roll was called and developed the fact that there was not a quorum present.

Mr. Kinnear moved a call of the House for the purpose of securing a quorum, and the call was duly ordered.

The Speaker then directed the Doorkeeper to close the main entrance to the Hall and instructed the Sergeant-at-Arms to lock all other doors leading from the Hall, and stated that no member would be permitted to leave the Hall without written permission from the Speaker.

On motion of Mr. Giles, the Sergeant-at-Arms was instructed to bring in all absent members within the State who are not ill.

The roll was again called, and the following members were present:

| | |
|---------------|-------------------|
| Mr. Speaker. | Cox of Limestone. |
| Acker. | Davis. |
| Ackerman. | Dunlap. |
| Adkins. | Dryvall. |
| Allred. | Enderby. |
| Anderson. | Eickenroht. |
| Barnett. | Farrar. |
| Bateman. | Forbes. |
| Beck. | Fuchs. |
| Bounds. | Gates. |
| Carpenter. | Giles. |
| Chastain. | Graves. |
| Coltrin. | of Williamson. |
| Conway. | Hardy. |
| Cox of Lamar. | Harding. |